A DIGEST OF ENGLISH CIVIL LAW.

EDITOR:
EDWARD JENKS.

BOOK III. PROPERTY

EDWARD JENKS.

MIDDLE TEMPLE LIBRARY
WITHDRAWN STOCK

KLIJEN

A DIGEST

OF

ENGLISH CIVIL LAW

A DIGEST

OF

ENGLISH CIVIL LAW

BY

EDWARD JENKS, M.A., B.C.L.

OF THE MIDDLE TEMPLE; PRINCIPAL AND DIRECTOR OF LEGAL STUDIES OF THE LAW SOCIETY; FORMERLY FELLOW OF KING'S COLLEGE, CAMBRIDGE

(Editor)

W. M. GELDART, M.A.

OF LINCOLN'S INN; VINERIAN PROFESSOR OF ENGLISH LAW; FELLOW OF ALL SOULS COLLEGE, OXFORD

R. W. LEE, M.A., B.C.L.

OF GRAY'S INN; FELLOW AND LECTURER OF WORCESTER COLLEGE, OXFORD; PROFESSOR IN UNIVERSITY COLLEGE, LONDON

W. S. HOLDSWORTH, D.C.L.

OF LINCOLN'S INN; ALL SOULS READER IN ENGLISH LAW, FELLOW AND LECTURER OF ST. JOHN'S COLLEGE, OXFORD

J. C. MILES, M.A.

OF THE INNER TEMPLE; FELLOW AND TUTOR OF MERTON COLLEGE, OXFORD

Barristers at Law

BOOK III

LAW OF PROPERTY

BY

EDWARD JENKS

LONDON

BUTTERWORTH & CO.

11 AND 12 BELL YARD, TEMPLE BAR

Law Publishers

BOSTON, U.S.A., THE BOSTON BOOK CO.

1911

(*All rights reserved*)

Copyright, 1911

By Edward Jenks, M.A., B.C.L.

9 Old Square, Lincoln's Inn, W.C., London, England

THE UNIVERSITY PRESS, CAMBRIDGE, U. S. A.

SCHEME OF THE WORK

Book I. — General . . . . . *Edward Jenks*

Book II. — Obligations

Part I. Obligations arising from Contract (General) . . . . . *R. W. Lee*

Part II. Obligations arising from Particular Contracts . . . . . *R. W. Lee*

Part III. Obligations arising from Quasi-Contract and Torts . . *J. C. Miles*

Book III. — Things (Property Law) *Edward Jenks*

Book IV. — Family Law . . . . . *W. M. Geldart*

Book V. — Succession . . . *W. S. Holdsworth*

CONTENTS OF THIS VOLUME

BOOK III. LAW OF PROPERTY

A. LAND PAGE

SECTION I — INTERESTS IN LAND

TITLE I — GENERAL 547

TITLE II — FREEHOLD ESTATES IN FEE SIMPLE . . 554

TITLE III — ESTATES TAIL 561

TITLE IV — ESTATES FOR LIFE 572

TITLE V — COPYHOLDS AND CUSTOMARY FREEHOLDS . . 584

TITLE VI — ESTATES FOR YEARS 608

TITLE VII — ESTATES AT WILL 640

TITLE VIII — FUTURE INTERESTS IN LAND . . 648

PROPOSED CONTENTS OF REMAINDER OF BOOK III

A. LAND (*continued*)

SECTION I — INTERESTS IN LAND (*continued*)

TITLE IX — PURELY INCORPOREAL HEREDITAMENTS

TITLE X — CUSTOMARY RIGHTS OVER LAND

TITLE XI — EQUITABLE INTERESTS IN LAND

TITLE XII — TENANCIES AT SUFFERANCE AND ADVERSE POSSESSION

SECTION II — RIGHTS AND LIABILITIES OF OWNERS OF LAND

TITLE I — TOWARDS THE PUBLIC (Nuisance (by reference), towards persons coming on land (do.), wild animals, seashore, tidal rivers, royal metals and fish, &c.)

TITLE II — TOWARDS NEIGHBOURS (vertical and lateral support, drainage, underground streams, riparian rights)

TITLE III — TOWARDS OTHER PERSONS INTERESTED (Law of Waste, Ground Game Acts)

SECTION III — RESTRICTIONS ON USER AND ALIENATION OF LAND

TITLE I — CONDITIONS (how far lawful and enforceable, destruction of, alienation and severance, waiver and licence, relief against forfeiture)

TITLE II — COVENANTS (binding (a) at law, and (b) in equity; different effects of each)

SECTION IV — ACQUISITION OF INTERESTS IN LAND

TITLE I — CONVEYANCE ON SALE (definition, forms, compulsory registration)

TITLE II — CONVEYANCE BY WAY OF MORTGAGE (forms, rights of mortgagor and mortgagee, consolidation and tacking, equitable charges and liens)

A. LAND (*continued*)

Title III — Conveyance by Way of Settlement (definition, classes of, effects of, voluntary settlements, implied trusts)

Title IV — Adverse Occupation and Prescription

Title V — Inheritance and Devise (Book V)

Section V — INVOLUNTARY ALIENATION OF INTERESTS IN LAND

Title I — Adverse Occupation (by reference)

Title II — Escheat and Forfeiture (other than forfeiture for breach of express condition)

Title III — Execution (*elegit, fi. fa.*, appointment of receiver)

Title IV — Bankruptcy (receiving order, adjudication, power of disclaimer, effect of, after-acquired property (§ 70))

Section VI — OVER-RIDING POWERS OF ALIENATION AND MANAGEMENT

Title I — Powers Created by Settlement (including powers of appointment)

Title II — Statutory Powers of Limited Owners

Section VII — INCAPACITY TO HOLD AND ALIENATE LAND

Title I — Infants

Title II — Married Women

Title III — Corporations

Title IV — Convicts

Title V — Lunatics and Intoxicated Persons

B. CHATTELS CORPOREAL

Section VIII — POSSESSION OF CHATTELS CORPOREAL

Title I — Acquisition and Loss of Possession

Title II — Rights and Liabilities of a Possessor (mainly by reference to Book II, Part III)

Section IX — OWNERSHIP OF CHATTELS CORPOREAL

Title I — General (rights and liabilities of owners, possibility of restrictions on ownership, of successive interests in)

Title II — Special Kinds of Ownership (animals, heirlooms)

B. CHATTELS CORPOREAL (*continued*)

SECTION X — ACQUISITION OF OWNERSHIP OF CHATTELS CORPOREAL

TITLE I — PRODUCTION

TITLE II — FINDING

TITLE III — PURCHASE (a good deal by reference to Book II, Part II, Sect. I; and including bills of sale at c. l. and under Act of 1878)

TITLE IV — MORTGAGE (including bills of sale by way of security)

TITLE V — GIFT AND EXCHANGE

TITLE VI — INHERITANCE AND TESTAMENT (Book V)

SECTION XI — INVOLUNTARY ALIENATION OF CHATTELS CORPOREAL

TITLE I — DISTRESS

TITLE II — EXECUTION (*fi. fa.*, sequestration (?), distringas, judgment in detinue, etc.)

TITLE III — BANKRUPTCY

SECTION XII — INCAPACITY TO HOLD AND ALIENATE CHATTELS CORPOREAL. (Aliens, infants, corporations, convicts, lunatics)

C. CHOSES-IN-ACTION

SECTION XIII — NATURE OF CHOSES-IN-ACTION

TITLE I — GENERAL (definition and enumeration)

TITLE II — DEBTS AND OTHER CONTRACTUAL INTERESTS

TITLE III — ANNUITIES

TITLE IV — STOCKS, SHARES, AND DEBENTURES

TITLE V — PATENTS AND DESIGNS

TITLE VI — TRADE MARKS, TRADE NAMES, AND GOOD-WILL

TITLE VII — COPYRIGHT (including 'unpublished' rights)

TITLE VIII — POLICIES OF INSURANCE

TITLE IX — FOREIGN JUDGMENTS

C. CHOSES-IN-ACTION (*continued*)

Section XIV — ALIENATION OF CHOSES-IN-ACTION

Title I — Voluntary (at law and in equity, future-acquired chattels, part of debt, etc.)

Title II — Involuntary (execution, lapse of time, merger)

Title III — Incapacity to Alienate and Restraints on Alienation

[The following Sections apply to all kinds of property]

Section XV — INEFFECTUAL ALIENATIONS OF PROPERTY

Title I — Under the Act of 1571

Title II — Under the Bankruptcy Acts

Title III — Under the Rule against Perpetuities

Title IV — Under the Rules against Accumulation

Title V — Under the General Rules of Law and Equity (largely by reference to Book I)

Section XVI — SPECIAL FORMS OF OWNERSHIP AND POSSESSION

Title I — Co-ownership and Co-possession (joint, common, parcenary, partition, rights of co-owners *inter se* and against the public)

Title II — Fiduciary Ownership

CONTENTS OF BOOK I

PAGE

SECTION I — PERSONS

TITLE I — NATURAL PERSONS 1

TITLE II — ARTIFICIAL PERSONS 5

SECTION II — THINGS 15

SECTION III — LEGAL ACTS

TITLE I — LEGAL CAPACITY 20

TITLE II — DECLARATION OF INTENTION . . . 32

TITLE III — CONDITIONS 47

TITLE IV — AGENCY AND REPRESENTATION . . . 52

SECTION IV — TIME 67

SECTION V — LIMITATION OF ACTIONS . . . 72

SECTION VI — SELF HELP 82

CONTENTS OF BOOK II, PART I

PAGE

SECTION I — FORMATION OF CONTRACT
- TITLE I — OFFER AND ACCEPTANCE 85
- TITLE II — FORM AND CONSIDERATION . . . 92

SECTION II — PARTIES TO A CONTRACT . . . 103

SECTION III — PERFORMANCE OF CONTRACT
- TITLE I — DUTY OF PERFORMANCE 105
- TITLE II — CONSEQUENCES OF NON-PERFORMANCE . 120
- TITLE III — IMPOSSIBILITY OF PERFORMANCE . . 129
- TITLE IV — RECIPROCAL PROMISES 134
- TITLE V — EARNEST AND PENALTIES 136

SECTION IV — ASSIGNMENT OF CONTRACT . . 141

SECTION V — DISCHARGE OF CONTRACT . . 144

SECTION VI — DISCHARGE OF RIGHTS OF ACTION ARISING FROM CONTRACT . . 150

SECTION VII — CO-DEBTORS AND CO-CREDITORS 153

CONTENTS OF BOOK II, PART II

PAGE

SECTION I — SALE
- TITLE I — SALE OF GOODS 161
- TITLE II — SALE OF LAND 184

SECTION II — HIRE 195

SECTION III — LOAN
- TITLE I — LOAN OF GOODS 198
- TITLE II — LOAN OF MONEY 201

SECTION IV — DEPOSIT 203

SECTION V — EMPLOYMENT
- TITLE I — MASTER AND SERVANT 207
- TITLE II — MASTER AND APPRENTICE . . . 216
- TITLE III — WORK AND LABOUR 221
- TITLE IV — WAGES 225
- TITLE V — PRINCIPAL AND AGENT 228

SECTION VI — INNKEEPER AND GUEST . . . 244

SECTION VII — CARRIAGE 249

SECTION VIII — PARTNERSHIP 262

SECTION IX — GUARANTEE 290

SECTION X — INSURANCE 303

SECTION XI — GAMING AND WAGERING . . . 309

CONTENTS OF BOOK II, PART III

PAGE

A. QUASI-CONTRACT 315

B. TORTS

SECTION I — GENERAL

TITLE I — PRELIMINARY 326

TITLE II — EXEMPTIONS FROM LIABILITY FOR TORTS 339

TITLE III — CAPACITY IN RESPECT OF TORTS . 346

TITLE IV — LIABILITY FOR THE TORTS OF OTHERS 350

TITLE V — LIABILITY FOR THE ACTS OF ANIMALS 358

TITLE VI — EXTINCTION AND TRANSFER OF RIGHTS AND LIABILITIES IN TORT 362

TITLE VII — REMEDIES FOR TORTS . . . 369

SECTION II — TORTS IN RESPECT OF LAND

TITLE I — TRESPASS 380

TITLE II — DISPOSSESSION 388

TITLE III — NUISANCE 391

TITLE IV — OTHER TORTS IN RESPECT OF LAND . 405

SECTION III — TORTS IN RESPECT OF CHATTELS PERSONAL

TITLE I — TRESPASS TO GOODS 407

TITLE II — CONVERSION 414

TITLE III — DETINUE 422

TITLE IV — OTHER TORTS IN RESPECT OF CHATTELS PERSONAL 426

CONTENTS OF BOOK II, PART III (*continued*)

B. TORTS (*continued*)

PAGE

SECTION IV — TORTS IN RESPECT OF THE PERSON

TITLE I — TRESPASS TO THE PERSON

SUB-TITLE A — ASSAULT AND BATTERY . . 431

SUB-TITLE B — FALSE IMPRISONMENT . . 439

TITLE II — OTHER INJURIES IN RESPECT OF THE PERSON 445

TITLE III — STATUTORY COMPENSATION FOR ACCIDENTS AND INDUSTRIAL DISEASES . . . 455

SECTION V — TORTS IN RESPECT OF DOMESTIC AND CONTRACTUAL RELATIONS

TITLE I — SEDUCTION 464

TITLE II — LOSS OF CONSORTIUM 470

TITLE III — DEPRIVATION OF SERVICES . . . 474

TITLE IV — PROCURING BREACH OF CONTRACT, AND INTERFERING WITH BUSINESS 479

SECTION VI — CONSPIRACY 481

SECTION VII — TORTS IN RESPECT OF THE ADMINISTRATION OF JUSTICE

TITLE I — MALICIOUS PROSECUTION AND ABUSE OF CIVIL PROCESS 487

TITLE II — MAINTENANCE AND CHAMPERTY . . 496

SECTION VIII — TORTS IN RESPECT OF THE REPUTATION (DEFAMATION) . . . 501

SECTION IX — TORTS IN RESPECT OF PUBLIC RIGHTS, EXECUTION, AND DISTRESS . 529

SECTION X — DECEIT 536

NOTE ON THE TREATMENT OF NEGLIGENCE IN THIS WORK 545

PREFACE

THE present volume commences the important subject of the Law of Property, and is concerned with the definition and contents of estates in land.

It is a common place, that a good deal of English Land Law is still "feudal" in character, *i.e.*, is permeated by rules which were really appropriate only when the defence and administration of the State rested mainly on the shoulders of land-owners, and which have been peculiarly tenacious in England, because in England, unlike some Continental countries, feudal principles were extended to those parts of land law which, in their origin, were purely economic.

The consequence is, that English Land Law, full of interest for the historian, is full of traps for the practitioner, who must always be on the watch to see that some archaic rule does not spring up at an inopportune moment, to wreck his careful and prosaic plans. And as, though the political and social influence attaching to land ownership is rapidly passing away, the possession and ownership of land are actually increasing in importance and value with the growth of population and wealth, an exact knowledge of Land Law becomes annually a more pressing necessity for the well-equipped lawyer. New developements of science, too, such as aviation, are likely to give rise to new problems, which will further complicate the situation. The editor has, therefore, little doubt that those readers who

have found the preceding volumes useful, will be prepared to extend a welcome to the present.

In the present volume, the parts of editor and author have been doubled; but the same exacting criticism which accompanied the production of the preceding volumes has been applied to this. Nothing appears which has not stood the test of two separate revisions by the authors jointly.

The material for the succeeding volume is almost complete; and the volume may be expected to appear in April or May of next year. In the meantime, however, it has been thought well to set out (at pp. ix–xii) the proposed arrangement of the rest of the Law of Property. The editor will be glad to hear from any critic who will take the trouble to suggest improvements in the scheme.

The law in this volume does not profess to be brought down later than Midsummer, 1911; but the usual opportunity has been taken to bring the preceding volumes down to that date by the page of *Errata and Addenda.*

September, 1911.

TABLE OF STATUTES

	PAGE
13 Edw. I (Statute of Westminster Second, 1285)	561
18 Edw. I, c. 1 (*Quia Emptores*, 1290)	555, 558
28 Edw. I, st. I, c. 4	550
52 Hen. III. c. 23 (Statute of Marlborough, 1267)	625
21 Hen. VIII. c. 15 (Recoveries, 1529)	608
27 Hen. VIII. c. 10 (Statute of Uses, 1535)	553, 589 608, 609, 649, 664
32 Hen. VIII. c. 1 (Statute of Wills, 1540)	664
32 Hen. VIII. c. 9 (Juries, 1540)	
s. 3	640
32 Hen. VIII. c. 34 (Covenants Act, 1540)	
s. 1	629
s. 2	629
32 Hen. VIII. c. 37 (Administration of Estates, 1540)	549
34 & 35 Hen. VIII. c. 20 (Fines and Recoveries, 1542)	
s. 1	564
s. 2	564
27 Eliz. c. 6 (Juries, 1584)	
s. 1	640
21 Jac. I, c. 16 (Statute of Limitations, 1623)	591
12 Car. II. c. 24 (Abolition of Feudal Tenures, 1660)	550, 589
18 & 19 Car. II. c. 11 (*Cestui Que Vie* Act, 1666)	
s. 1	582
29 Car. II. c. 3 (Statute of Frauds, 1677)	609
s. 1	641
4 & 5 Anne, c. 16 (Act for the Amendment of the Law)	
s. 9	652
s. 10	652
6 Anne, c. 75 (*Cestui Que Vie* Act, 1707)	
s. 1	583
s. 2	583
s. 3	583
s. 4	583
4 Geo. II. c. 28 (Landlord and Tenant Act, 1730)	
s. 1	634
s. 6	627
11 Geo. II. c. 19 (Distress for Rent Act, 1737)	633
s. 10	645
s. 11	652
s. 16	633
s. 18	634

PAGE

24 Geo. II c. 23 (New Style Calendar)
s. 2 xliii
55 Geo. III. c. 192 (Wills Act, 1814) 587
57 Geo. III. c. 52 (Deserted Tenements Act, 1817) 633
59 Geo. III. c. 12 (Poor Relief Act, 1819)
s. 24 634
s. 25 634
6 Geo. IV. c. 50 (Juries Act, 1825) 640
s. 1 640
s. 50 640
s. 52 640
11 Geo. IV. & 1 Will. IV. c. 65 (Infants' Property Act, 1830)
s. 6 591
s. 9 591
2 & 3 Will. IV. c. 42 (Allotments Act, 1832)
s. 6 634
3 & 4 Will. IV. c. 27 (Real Property Limitation Act, 1833)
s. 3 643
s. 36 576
3 & 4 Will. IV. c. 74 (Fines and Recoveries Act, 1833) 548, 564
s. 3 564
s. 15 564
s. 18 564
s. 19 565, 569
s. 21 564
s. 22 565, 566
s. 23 568
s. 25 566
s. 26 566
s. 27 566
s. 28 567
s. 32 566
s. 33 567
s. 34 564, 565
s. 35 569
s. 36 567
s. 37 567
s. 38 571
s. 39 553, 569, 570
s. 42 568
s. 44 568
s. 46 568

PAGE

3 & 4 Will. IV. c. 74 (Fines and Recoveries Act, 1833) *continued*
s. 47 571
s. 50 589
s. 51 589
s. 52 589
s. 53 589
s. 54 589
s. 60 569
3 & 4 Will. IV. c. 106 (Inheritance Act, 1833) 587
s. 2 554
s. 3 650
s. 4 555, 561
7 Will. IV. & 1 Vict. c. 26 (Wills Act. 1837) 587
s. 3 579, 586, 652
s. 6 579, 597, 598
s. 9 586
s. 28 556, 563, 573, 582
s. 29 666
1 & 2 Vict. c. 74 (Small Tenements Recovery Act, 1838)
s. 1 634
2 & 3 Vict. c. 47 (Metropolitan Police Courts Act, 1839)
s. 14 634
3 & 4 Vict. c. 84 (Metropolitan Police Courts Act, 1840)
s. 13 633
8 & 9 Vict. c. 18 (Lands Clauses Act, 1845)
s. 95 590
s. 96 590
s. 97 590
8 & 9 Vict. c. 106 (Real Property Act, 1845) 589, 654
s. 4 635
s. 5 629
s. 6 652
s. 8 663
s. 9 627
8 & 9 Vict. c. 112 (Satisfied Terms Act, 1845) 553
s. 1 638
s. 2 638
8 & 9 Vict. c. 118 (Inclosure Act, 1845)
s. 111 634
13 & 14 Vict. c. 25 (Landlord and Tenant Act, 1851)
s. 1 575, 624, 646
21 & 22 Vict. c. 27 (Chancery Amendment Act, 1858)
s. 2 558

PAGE

21 & 22 Vict. c. 73 (Stipendiary Magistrates' Act, 1858)
s. 1 633, 634
s. 2 634
22 & 23 Vict. c. 35 (Law of Property Amendment Act, 1859)
s. 3 629
s. 19 554
22 Vict. c. 12 (Defence Act, 1859)
s. 5 634
23 & 24 Vict. c. 38 (Law of Property Amendment Act, 1860)
s. 7 665
25 & 26 Vict. c. 67 (Declaration of Title Act, 1862)
s. 1 651
s. 48 651
27 & 28 Vict. c. 57 (Admiralty Lands and Works Act, 1864)
s. 12 634
31 & 32 Vict. c. 40 (Partition Act, 1868) 587
33 & 34 Vict. c. 35 (Apportionment Act, 1870) 645
36 & 37 Vict. c. 66 (Judicature Act, 1873)
s. 24 (5) 592
s. 25 (3) 558, 563, 576, 626
(4) 553
37 & 38 Vict. c. 57 (Real Property Limitation Act, 1874)
s. 6 569
39 & 40 Vict. c. 17 (Partition Act, 1876) 587
40 & 41 Vict. c. 33 (Contingent Remainders Act, 1877) 653, 657, 658, 663
44 & 45 Vict. c. 41 (Conveyancing and Law of Property Act, 1881)
s. 10 621, 629
s. 11 629
s. 12 629
s. 14 549, 627
s. 51 555, 556, 562, 580
s. 65 (1) 639
(2) 639
(4) 639
(6) 639
45 & 46 Vict. c. 38 (Settled Land Act, 1882)
s. 3 (ii) 605
s. 10 (i) 608
45 & 46 Vict. c. 39 (Conveyancing Act, 1882)
s. 10 667
s. 11 639
45 & 46 Vict. c. 75 (Married Women's Property Act, 1882) 585

PAGE

46 & 47 Vict. c. 52 (Bankruptcy Act, 1883)
s. 55 (6) 628
50 & 51 Vict. c. 73 (Copyhold Act, 1887)
s. 4 605
50 & 51 Vict. c. 48 (Allotments and Cottage Gardens (Compensation for Crops) Act, 1887) 625
52 & 53 Vict. c. 63 (Interpretation Act, 1889)
s. 19 556
53 & 54 Vict. c. 5 (Lunacy Act, 1890)
s. 108 567
s. 125 591
s. 126 591
53 & 54 Vict. c. 57 (Tenants Compensation Act, 1890)
s. 2 620, 625
53 & 54 Vict. c. 70 (Housing of the Working Classes Act, 1890)
s. 75 637
53 & 54 Vict. c. 71 (Bankruptcy Act, 1890)
s. 13 628
55 & 56 Vict. c. 13 (Conveyancing Act, 1892)
s. 3 631
57 & 58 Vict. c. 46 (Copyhold Act, 1894)
s. 1 589, 600
s. 2 607
s. 3 600, 603
s. 4 600
s. 7 601
s. 8 (1) 601
(2) 601
s. 9 601
s. 10 601
s. 11 601
s. 12 602
s. 13 603, 606
s. 14 (1) 599
(2) 599
(3) 599
s. 15 599
(3) 600
s. 19 600
s. 21 602, 603
(b) 605
s. 22 602
s. 23 602

PAGE

57 & 58 Vict. c. 46 (Copyhold Act, 1894) *continued*
s. 24 603
s. 30 601
s. 42 600
s. 69 599
s. 79 604
s. 81 588
s. 82 588
s. 83 588, 589
s. 84 589
s. 85 589
s. 86 587
s. 87 587
s. 94 585, 599, 600, 607
60 & 61 Vict. c. 65 (Land Transfer Act, 1897) 578
s. 1 554, 571, 579
s. 2 (2) 554
3 Edw. VII. c. 39 (Housing of the Working Classes Act, 1903)
s. 12 637
8 Edw. VII. c. 28 (Agricultural Holdings Act, 1908) 619
s. 1 625
s. 2 625
s. 3 625
s. 4 625
s. 5 625
s. 6 625
s. 7 625
s. 8 625
s. 9 625
s. 10 625
s. 11 625
s. 12 625
s. 12 (2) 620
s. 13 625
s. 15 625
s. 22 619
s. 46 624
Sched. II. 625
" IV. 620
9 Edw. VII. c. 44 (Housing, Town Planning, &c. Act, 1909)
s. 14 636, 637
s. 15 637

TABLE OF CASES

PAGE

Ackland *v.* Lutley (1839) 9 A. & E. 879; 1 P. & D. 636; 8 L. J. Q. B. 164 615

Adams *v.* Gibney (1830) 6 Bing. 656; 4 M. & P. 491; 8 L. J. (O. S.) C. P. 242; 31 R. R. 514 635

Agard *v.* King (1600) Cro. Eliz. 775 618, 645

Allen *v.* Bewsey (1877) 7 Ch. D. 453; 37 L. T. 688 590, 598

Allwood *v.* Heywood (1863) 1 H. & C. 745; 32 L. J. Ex. 153; 7 L. T. 640; 9 Jur. (N. S.) 108; 11 W. R. 291 574

Alton Woods Case (1600) 1 Rep. at 43 b 641

Anderson *v.* M. R. Co. (1861) 3 E. & E. 614; 30 L. J. Q. B. 94; 3 L. T. 809; 7 Jur. (N. S.) 411 641, 645

Anderson *v.* Pignet (1872) L. R. 8 Ch. App. 180; 42 L. J. Ch. 310; 27 L. T. 740; 21 W. R. 150 638

Anderton's and Milner's Contract (1890) 45 Ch. D. 476; 59 L. J. Ch. 765; 63 L. T. 332; 39 W. R. 44 633

Andrew *v.* Bridgman [1908] 1 K. B. 596; 77 L. J. K. B. 272; 98 L. T. 656 630, 631

Andrew's Case (1591) Cro. Eliz. 214 635

Anon. (n. d.) 1 Brownl. 43 647

Anon. (1505) Keilw. 65 645

Anon. (1537) Dyer, 33 a 650

Anon. (1570) Dyer, 303 b 655

Anon. (1572) 4 Leon. 33 641

Anon. (1584) Moore, 159 616

Anon. (1611) 1 Bulstr. at p. 177 614

Anon. (1773) Lofft, 275 615

Archer's Case (1597) 1 Rep. 63 b, 66 b 654, 660

Asher *v.* Whitlock (1865) L. R. 1 Q. B. 1; 35 L. J. Q. B. 17; 13 L. T. 254; 11 Jur. (N. S.) 925; 14 W. R. 26 557

Ashford, *Re* [1905] 1 Ch. 535; 74 L. J. Ch. 361; 92 L. T. 534; 53 W. R. 328; 21 T. L. R. 329 662

Ashley *v.* Ashley (1833) 6 Lim. 358; 3 L. J. Ch. 61 657

Aspinwall *v.* Leigh (1690) 2 Vern. 217 668

Atkinson *v.* Baker (1791) 4 T. R. 229; 2 R. R. 366 579

A. G. *v.* Kerr (1840) 2 Beav. 420; 9 L. J. Ch. 190; 4 Jur. 406 553

A. G. *v.* Lewin (1837) 8 Sim. 366; C. P. Cooper, 51; 6 L. J. Ch. 204; 1 Jur. 134 590

A. G. *v.* Sandover [1904] 1 K. B. 689; 73 L. J. K. B. 478; 90 L. T. 480; 52 W. R. 573; 20 T. L. R. 351 595

A. G. *v.* Tomline (1877) 5 Ch. D. 750; 46 L. J. Ch. 654; 36 L. T. 684; 25 W. R. 802 (1880); 15 Ch. D. 150; 43 L. T. 486 594

Auncelme *v.* Auncelme (1603) Cro. Jac. 31 598

Austen *v.* Bennet (1693) 1 Salk. 356 551

PAGE

Austin *v.* Newham [1906] 2 K. B. 167; 75 L. J. K. B. 563; 95 L. T. 490 573
Ayres *v.* Falkland (1697) L. Raymond, 326 560

Bacon *v.* Waller (1616) 3 Bulstr. 204 615
Badger *v.* Ford (1819) 3 B. & Ad. 153 586
Bagshaw *v.* Spencer (1748) 1 Ves. Sen. 142 560
Baker *v.* Parson (1872) 42 L. J. Ch. 228 659
Baker *v.* White (1875) L. R. 20 Eq. 166; 44 L. J. Ch. 651; 33 L. T. 347; 23 W. R. 670 589, 664
Ball *v.* Cullimore (1835) 2 C. M. & R. 120; 1 Gale, 96; 5 Tyr. 753 619, 643
Bamfield *v.* Popham (1702) 1 P. Wms. at p. 57 666
Bandy *v.* Cartwright (1853) 8 Exch. 913; 22 L. J. Ex. 285 635
Bankes *v.* Small (1887) 36 Ch. D. 716; 56 L. J. Ch. 832; 57 L. T. 292; 35 W. R. 765 571
Barber, *Re* (1881) 18 Ch. D. 624 579, 581
Barden's and Withington's Case (1587) 2 Leon. 54 646
Barham *v.* Hayman (1559) Dyer, 173 a 642
Baring *v.* Abingdon [1892] 2 Ch. 374; 62 L. J. Ch. 105; 67 L. T. 6; 41 W. R. 22 607
Barker *v.* Keat (1677) Mod. 249 608, 609
Barnett *v.* Earl of Guildford (1856) 11 Exch. 19; 24 L. J. Ex. 281; 1 Jur. (N. S.) 1142; 3 W. R. 406 612
Barnfather *v.* Jordan (1780) 2 Burr. 452 632
Barrow *v.* Isaacs [1891] 1 Q. B. 417; 60 L. J. Q. B. 179; 64 L. T. 686; 55 J. P. 517; 39 W. R. 338 627
Bartlett *v.* Downes (1825) 3 B. & C. 616; 5 D. & R. 526; 1 Car. & P. 522; 3 L. J. (O. S.) K. B. 90; 27 R. R. 436 585
Barwick's Case (1597) 5 Rep. 93 a, 94 b 610, 614, 656
Bath's, Bishop of, Case (1605) 6 Rep. 34 a, 35 b 608, 614, 641
Baynes *v.* Lloyd [1895] 1 Q. B. 820 635
Beard, *Re* [1908] 1 Ch. 383; 77 L. J. Ch. 265; 98 L. T. 315; 24 T. L. R. 225 577
Beardman *v.* Wilson (1868) L. R. 4 C. P. 57; 38 L. J. C. P. 91; 19 L. T. 282; 17 W. R. 54 632
Bedford *v.* Johnson (1659) 2 Sid. 153 641, 642
Bedingfield *v.* Onslow (1685) Lev. 209 667
Bedson's Trusts, *Re* (1884) 25 Ch. D. 458 577
Bellasis *v.* Burbriche (1696) 1 Ld. Raym. 170 613
Bennett *v.* Turner (1840) 10 L. J. Ex. 213 646
Bewick *v.* Whitfield (1734) 3 P. Wms. 268 577
Bingham *v.* Woodgate (1829) 1 Russ. & M. 32; Tam. 183; 8 L. J. (O. S.) Ch. 46 606
Birch *v.* Wright (1786) 1 T. R. 378; 1 R. R. 228 642, 646
Birch-Wolfe *v.* Birch (1870) L. R. 9 Eq. 683; 39 L. J. Ch. 345; 23 L. T. 216; 18 W. R. 594 576
Bird *v.* Lord Greville (1884) Cab. & E. 317 636
Bishop *v.* Howard (1823) 2 B. & C. 100; 3 D. & R. 293; 1 L. J. (O. S.) K. B. 243; 1 L. J. (O. S.) K. B. 243; 26 R. R. 291 619
Blackman *v.* Fysh [1892] 3 Ch. 209; 67 L. T. 802; 2 R. 1 577, 658
Blackmore *v.* White [1899] 1 Q. B. 293; 68 L. J. Q. B. 180; 80 L. T. 79; 47 W. R. 448 592
Blake *v.* Luxton (1795) 6 T. R. 289; G. Coop. 178; 3 P. Wms. 10; 14 R. R. 235 580
Blake *v.* Peters (1863) 1 De G. J. & S. 345; 1 N. R. 503; 9 Jur. (N. S.) 836; 32 L. J. Ch. 200; 9 L. T. 247; 11 W. R. 409 557, 668
Blaker *v.* Wells (1873) 28 L. T. 21 591
Blamford *v.* Blamford (1615) 3 Bulst. 100 641

PAGE

Bliss *v.* Collins (1822) 5 B. & Ald. 876; 1 D. & R. 291; 24 R. R. 601 622
Blunden *v.* Baugh (1634) Cro. Car. 305 640, 641, 647
Boddington *v.* Abernethy (1826) 5 B. & C. 776; 8 D. & R. 626; 4 L. J. (O. S.) K. B. 181 665
Boddington *v.* Robinson (1875) L. R. 10 Exch. 270; 44 L. J. Ex. 223; 33 L. T. 364; 23 W. R. 925 573
Booth, *Re* [1900] 1 Ch. 768; 69 L. J. Ch. 474; 48 W. R. 566 666
Bourne *v.* Taylor (1808) 10 East, 189; 10 R. R. 267 594
Bowes' (Sir Thomas) Case (1670) Vin. Ab. X, 400 642
Bowles' (Lewis) Case (1615) 11 Rep. 79 b, 80 a 651, 659
Bowles, *Re* [1902] 2 Ch. 650; 71 L. J. Ch. 822; 51 W. R. 124 661
Bowser *v.* Maclean (1860) 2 De G. F. & J. 415; 30 L. J. Ch. 273; 6 Jur. (N. S.) 1220; 3 L. T. 456; 9 W. R. 112 594
Brabant *v.* Wilson (1865) L. R. 1 Q. B. 44; 6 B. & S. 979; 35 L. J. Q. B. 49; 12 Jur. (N. S.) 24; 13 L. T. 319; 14 W. R. 28 606
Bradford *v.* Brownjohn (1868) L. R. 3 Ch. App. 711; 38 L. J. Ch. 10; 18 L. T. 388; 16 W. R. 1178 596
Bradshaw *v.* Lawson (1791) 4 T. R. 443 584, 605
Bridges *v.* Hitchcock (1715) 5 Bro. P. C. 6 616
Brigstock *v.* Brigstock (1878) 8 Ch. D. 357; 47 L. J. Ch. 817; 38 L. T. 760; 26 W. R. 761 574
Broadbent *v.* Wilks (1742) Wils. 360 566
Bromfield *v.* Smith (1805) 6 East, 530 619
Brook *v* Bulkeley (1752) 2 Ves. Sen. 498 616
Broughten's Case (1482) Y. B. 22 Edw. II.; Pasch. pl. 15 647
Brown *v.* Tighe (1834) 2 Cl. & F. 396 617
Brown's Case (1581) 4 Rep. at 22 b 653
Browne *v.* Flower [1911] 1 Ch. 219; 80 L. J. Ch. 181; 103 L. T. 557; 55 Sol. Jo. 108 635
Brudnel's Case (1592) 5 Rep. 9 573
Bruerton *v.* Rainsford (1583) Cro. Eliz. 15 610
Buckler *v.* Harvey (1594) Cro. Eliz. 450 656
Buckley *v.* Kenyon (1808) 10 East, 139 621
Budd-Scott *v.* Daniell [1902] 2 K. B. 351; 71 L. J. K. B. 706; 87 L. T. 392; 18 T. L. R. 675 635
Bullock's Settled Estates, *Re* (1905) 91 L. T. 651 659
Burgess *v.* Thompson (1836) 5 A. & E. 532 585
Burnett *v.* Lynch (1826) 5 B. & C. 589; 8 D. & R. 368; 4 L. J. (O. S.) K. B. 274 632
Burrell *v.* Dodd (1803) 3 Bos. & P. 378 606, 607
Busher *v.* Thompson (1846) 4 C. B. 48; 1 Lutw. Reg. Cas. 551; 16 L. J. C. P. 57; 11 Jur. 45 557, 606
Butler *v.* Rice [1910] 2 Ch. 277; 79 L. J. Ch. 652; 103 L. T. 94 553
Byng *v.* Byng (1862) 10 H. L. C. 171; 31 L. J. Ch. 470; 8 Jur. (N. S.) 1135; 7 L. T. 1; 10 W. R. 633 562

Cadee's and Oliver's Case (1587) 3 Leon. 153 641
Cadell *v.* Palmer (1833) 1 Cl. & F. 372 662
Caldecott *v.* Smythies (1837) 7 C. & P. 808 625
Campbell *v.* Sandys (1803) 1 Sch. & Lef. 281; 9 R. R. 33 571, 580, 581
Cannon Brewery *v.* Nash (1898) 77 L. T. 648 617
Canterbury (Corporation) *v.* Cooper (1908) 99 L. T. 613 552
Capital and Counties Bank *v.* Rhodes [1903] 1 Ch. 631; 72 L. J. Ch. 336; 51 W. R. 470; 88 L. T. 255; 19 T. L. R. 280 553

PAGE

Carpenter *v.* Colins (1605) Yelv. 73 647
Carter *v.* Sebright (1859) 26 Beav. 374; 28 L. J. Ch. 411; 5 Jur. (N. S.) 259; 7 W. R. 225 596
Cartwright, *Re* (1889) 41 Ch. D. 532; 58 L. J. Ch. 590; 60 L. T. 891; 37 W. R. 612 576, 626
Castle Bytham, *ex parte* [1895] 1 Ch. 348; 64 L. J. Ch. 116; 71 L. T. 606; 43 W. R. 156; 13 R. 24 556
Cawthorn *v.* Mee (1833) 4 B. & Ad. 617 584
Challoner *v.* Murhall (1795) 2 Ves. Jun. 524; 3 R. R. 1 606
Chancellor *v.* Poole (1781) 2 Burr. 764 632
Charsley *v.* Jones (1889) 53 J. P. 280 636
Chedington's, Rector of, Case (1598) 1 Rep. 152 b 613
Chidborn *v.* Green (1839) 9 A. & E. 658 617
Cholmley's Case (1597) 2 Rep. 51 b 662
Christ Church, Dean of, *v.* Duke of Buckingham (1864) 17 C. B. (N. S.) 391; 33 L. J. C. P. 322; 10 Jur. (N. S.) 749; 10 L. T. 575; 12 W. R. 986 585
Chudleigh's Case (1589) 1 Rep. 113 b 657
Clache's Case (1572) Dyer, 330 b 655
Clark *v.* Danvers (1679) 1 Ca. Ch. 310 597
Clarke *v.* Pennifather (1584) 4 Rep. 23 b 585, 586
Clarke *v.* Smaridge (1845) 7 Q. B. 957 617, 619
Claxton *v.* Claxton (1690) 2 Vern. 152 668
Clayton *v.* Williams (1843) 11 M. & W. at p. 807 584
Clayton's Case (1585) 5 Rep. 1 614
Clun's (William) Case (1613) 10 Rep. 128 a 621
Coatsworth *v.* Johnson (1886) 54 L. T. 520; 55 L. J. Q. B. 220 643
Cobb *v.* Stokes (1807) 8 East, 358 619
Coe *v.* Clay (1829) 5 Bing. 440; 3 M. & P. 57; 7 L. J. (O. S) C. P. 162; 30 R. R. 699 611
Cohen *v.* Bayley-Worthington [1908] A. C. 97; 77 L. J. Ch. 363; 98 L. T. 461; 52 Sol. Jo. 238 568
Cole *v.* Levingston (1672) 1 Vent. 224 655
Cole *v.* Sewell (1843) 4 Dr. & W. 1; 2 Con. & L. 344; 6 Ir. Eq. R. 66; affirmed 2 H. L. Cas. 186; 12 Jur. 927 657
Colebourn's and Mixtone's Case (1588) 1 Leon. 129 613
Collett *v.* Curling (1847) 10 Q. B. 785; 16 L. J. Q. B. 390; 11 Jur. 890 622
Colthirst *v.* Byushin (1550) 1 Plowd. 21 654
Cook *v.* Danvers (1806) 7 East, 299 607
Coomber *v.* Howard (1845) 1 C. B. 440 622
Copestake *v.* Hoper [1908] 2 Ch. 10; 77 L. J. Ch. 610; 99 L. T. 371; 24 T. L. R. 628; 52 Sol. Jo. 516 606
Copper Mining Co. *v.* Beach (1823) 13 Beav. 478 614
Corbet *v.* Stone (1653) Ld. Raym., at p. 151 654
Corbet's Case (1599) 1 Rep. 84, 87 560, 564
Corbett *v.* Corbett (1888) 13 P. D. 136; (1889) 14 P. D. 7; 58 L. J. P. 17; 60 L. T. 74; 37 W. R. 114 558
Cornish *v.* Caway (1648) Aleyn, 75 614
Cotgrave, *Re* [1903] 2 Ch. 705; 72 L. J. Ch. 777; 89 L. T. 433; 52 W. R. 411; 10 Mass. 377 577
Cottee *v.* Richardson (1851) 7 Exch. 143; 21 L. J. Ex. 52 627
Cowley, Earl, *v.* Wellesley (1866) 35 Beav. 635; L. R. 1 Eq. 656; 14 L. T. 425; 14 W. R. 528 596
Cox *v.* Higford (1710) 2 Vern. 664 592, 594

PAGE

Creaton *v.* Creaton (1856) 26 L. J. Ch. 266; 3 Sm. & G. 386; 2 Jur. (N. S.) 1223; 5 W. R. 123 659
Cresswell *v.* Hawkins (1857) 3 Jur. (N. S.) 407 581, 589
Crocker *v.* Waine (1854) 5 B. & S. 697; 33 L. J. Q. B. 316; 10 L. T. 600; 12 W. R. 905 571
Crowder *v.* Oldfield (1706) 1 Salk. 170 605
Crumpe *v.* Crumpe [1900] A. C. 127; 69 L. J. P. C. 7; 82 L. T. 130 556

Damerell *v.* Protheroe (1847) 10 Q. B. 20; 16 L. J. Q. B. 170; 11 Jur. 331 551
Dann *v.* Spurrier (1803) 3 B. & P. 399; 7 R. R. 797; 7 Ves. 231; 6 R. R. 119 620
D'Arcy *v.* Blake (1805) 2 Sch. & Lef., at p. 390 650
Darke *v.* Bowditch (1846) 8 Q. B. 973 633
Davies *v.* Davies (1888) 38 Ch. D. 499; 57 L. J. Ch. 1093; 58 L. T. 514; 36 W. R. 399 626
Dawkins *v.* Lord Penrhyn (1878) L. R. 4 App. Ca. 51; 48 L. J. Ch. 304; 39 L. T. 583; 27 W. R. 173 564
Day *v.* Day (1854) Kay, at p. 709 573
Dayrell *v.* Champness (1700) 1 Eq. Cas. Ab. 400 668
Delacherois *v.* Delacherois (1864) 11 H. L. C. 62; 4 N. R. 501; 10 Jur. (N. S.) 886; 10 L. T. 884; 13 W. R. 24 584
Denn *v.* Cartwright (1803) 4 East, 31 617, 619
Denn *v.* Fearnside (1747) 1 Wils. 176 641
Dewar *v.* Goodman [1909] A. C. 72; 78 L. J. K. B. 209; 100 L. T. 2; 25 T. L. R. 137; 53 Sol. Jo. 116 628
Dibble *v.* Bowater (1853) 2 E. & B. 564; 22 L. J. Q. B. 396; 17 Jur. 1054; 1 W. R. 435 622
Dighton *v.* Greenvil (n. d.) 2 Vent., at p. 328 648
Dimsdale *v.* Isles (1672) 3 Keb. 166 644
Dixon, *Re* [1903] 2 Ch. 458; 72 L. J. C. H. 642; 88 L. T. 862; 51 W. R. 652 559
Doe *v.* Barton (1840) 11 A. & E. 307; 3 P. & D. 194; 9 L. J. Q. B. 57; 4 Jur. 432 642
Doe *v.* Benham (1845) 7 Q. B. 976; 14 L. J. Q. B. 342; 9 Jur. 662 621
Doe *v.* Benjamin (1839) 9 A. & E. 644; 1 P. & D. 440; 2 W. W. & H. 96; 8 L. J. Q. B. 117 614
Doe *v.* Clarke (1807) 8 East, 183 615
Doe *v.* Cole (1827) 7 B. & C. 243; 1 Man. & Ry. 33; 6 L. J. (O. S.) K. B. 20 650
Doe *v.* Day (1842) 2 Q. B. 147; 2 G. & D. 757; 12 L. J. Q. B. 86; 6 Jur. 913 610, 611
Doe *v.* Dixon (1807) 9 East, 14 620
Doe *v.* Dorvell (1794) 5 T. R. 518 656
Doe *v.* Giles (1829) 5 Bing. 421; 2 M. & P. 749; 7 L. J. (O. S.) C. P. 134; 30 R. R. 686 642, 645, 646
Doe *v.* Penfold (1838) 8 C. & P. 536 557
Doe d. Rigge *v.* Bell (1793) 5 T. R. 471; 2 R. R. 642 618
Doe *v.* Rivers (1797) 7 T. R. 276 571
Doe *v.* Watts (1797) 7 T. R. 83; 2 Esp. 501; 4 R. R. 387 618
Doe *v.* Whichelo (1799) 8 T. R. 211 571
Doe *v.* Williams (1836) 5 A. & E. 291; 6 N. & M. 816; 2 H. & W. 213; 5 L. J. K. B. 231 642
Doherty *v.* Allman (1878) L. R. 3 App. Ca. 709; 39 L. T. 129; 26 W. R. 513 577, 626
Doncaster *v.* Doncaster (1856) 3 K. & J. 26; 2 Jur. (N. S.) 1066 580
Dougal *v.* McCarthy [1893] 1 Q. B. 736; 62 L. J. Q. B. 462; 68 L. T. 699; 57 J. P. 597; 41 W. R. 484; 4 R. 402 619

PAGE

Douglas, *Re* (1884) 28 Ch. D. 327; 54 L. J. Ch. 421; 52 L. T. 131; 33 W. R. 390 553
Douglas *v.* Earl Dysart (1861) 10 C. B. (N. S.) 688; 6 L. T. 327 595
Dowling *v.* Mill (1816) 1 Madd. 541 617
Dudson's Contract, *Re* (1873) 8 Ch. D. 628; 47 L. J. Ch. 632; 39 L. T. 182; 27 W. R. 179 566
Dugdale, *Re* (1888) 38 Ch. D. 176; 57 L. J. Ch. 634; 58 L. T. 181; 36 W. R. 462 558, 559
Dunn *v.* Green (1724) 3 P. Wms. 9 606
Dunsany's Settlement, *Re* [1906] 1 Ch. 578; 75 L. J. (Ch.) 356; 94 L. T. 361 553, 570
Duxbury *v.* Sandiford (1898) 80 L. T. 552 609, 616
Dyson *v.* Forster [1909] A. C. 98; 78 L. J. K. B. 246; 99 L. T. 942; 25 T. L. R. 166; 53 Sol. Jo. 149 628, 629

Eardley *v.* Earl Granville (1876) 3 Ch. D. 826; 45 L. J. Ch. 669; 34 L. T. 609; 24 W. R. 528 594
Eastern Telegraph Co. *v.* Dent [1899] 1 Q. B. 835; 68 L. J. Q. B. 564; 80 L. T. 459; 15 T. L. R. 296 C. A. 627
Edmund *v.* Martell (1908) 24 T. L. R. 25 577
Edwards, *Re* [1894] 3 Ch. 644; 64 L. J. Ch. 179; 8 R. 618; 43 W. R. 169 666
Edwards *v.* Moseley (1740) Willes, 192 551
Elwes *v.* Brigg Gas Co. (1886) 33 Ch. D. 562; 55 L. J. Ch. 734; 55 L. T. 831; 35 W. R. 192 623
Ely, Dean and Chapter *v.* Caldecot (1832) 8 Bing. 439; 1 M. & Sc. 633; 1 L. J. C. P. 131 598
Ethel's and Mitchell's and Butler's Contract [1901] 1 Ch. 945; 70 L. J. Ch. 498; 84 L. T. 459; 17 T. L. T. R. 392 555
Evans *v.* Evans [1892] 2 Ch. 173; 61 L. J. Ch. 456; 67 L. T. 152; 40 W. R. 465 660
Evans *v.* Levy [1910] 1 Ch. 452; 79 L. J. Ch. 383; 102 L. T. 128 630, 631
Evelyn *v.* Chichester (1765) 3 Burr. 1717 591
Everest *v.* Glyn (1815) 6 Taunt. 425 586, 591
Ewer *v.* Moyle (1600) Cro. Eliz. 771 622
Eyres *v.* Faulkland (1697) 1 Salk. 231 665

Fawcet *v.* Lowther (1751) 2 Ves. Sen., at p. 302 586, 594
Festing *v.* Allen (1843) 12 M. & W. 279; 13 L. J. Ex. 74 658
Firebrass *v.* Pennant (1764) 2 Wils. 254 585
Fisher *v.* Wigg (1700) 1 P. Wms., at p. 16 590, 666
Fitch *v.* Stuckley (1594) 4 Rep. 23 a 653
Flack *v.* Downing College (1853) 13 C. B. 945; 1 C. L. R. 692; 22 L. J. C. P. 229; 17 Jur. 697; 1 W. R. 453 665
Fort *v.* Ward (1598) Moore, 667 605
Fox's (Edward) Case (1610) 8 Rep. 93 b, 94 a 609, 616
Fraser *v.* Mason (1883) 11 Q. B. D. 574; 52 L. J. Q. B. 643; 49 L. T. 761; 32 W. R. 421 591
Freeman *v.* Barnes (1646) Sid., at p. 460 642, 643
French-Brewster's Settlements, *Re* [1904] 1 Ch. 713; 73 L. J. Ch. 405; 90 L. T. 378; 52 W. R. 377 553
Frost, *Re* (1889) 43 Ch. D. 246; 59 L. J. Ch. 118; 62 L. T. 25; 38 W. R. 264 662
Fuller *v.* Chamier (1866) L. R. 2 Eq. 682; 35 L. J. Ch. 772; 12 Jur. (N. S.) 642; 14 W. R. 913 660
Furnival *v.* Crew (1744) 3 Atk. 83 617

PAGE

Galbraith *v.* Poynton [1905] 2 K. B. 258; 74 L. J. (K. B.) 649 591, 592
Garland *v.* Mead (1871) L. R. 6 Q. B. 441; 40 L. J. Q. B. 179; 24 L. T. 421; 19 W. R. 1156 587
Garner *v.* Hannyngton (1836) 22 Beav. 627 574
Garrard *v.* Tuck (1849) 8 C. B. 231; 18 L. J. C. P. 338; 13 Jur. 871 643
Garth *v.* Cotton (1750) 1 Ves. Sen. 545 668
Gatenby *v.* Morgan (1876) 1 Q. B. D. 685 556
Gay *v.* Kay (1599) Cro. Eliz. 661 585
Geanes *v.* Portman (1594) Cro. Eliz. 314 647
Geary *v.* Barecroft (1667) 1 Sid. 346 643, 647, 654
Gibbon, *Re* [1909] 1 Ch. 367; 78 L. J. (Ch.) 264; 100 L. T. 231; 53 Sol. Jo. 177 553
Gilbert *v.* Witty (1621) Cro. Jac. 655 655
Gillard *v.* Cheshire Lines Committee (1884) 32 W. R. 943 612
Gladman *v.* Plumer (1845) 15 L. J. Q. B. 79; 10 Jur. 109 652
Goddard's Case (1584) 2 Rep. 5 a 614
Goodright *v.* Meade (1765) 3 Burr, 1704 548
Goodright *v.* Richardson (1789) 3 T. R. 462 615, 620
Goodtitle *v.* Herring (1801) 1 East, 264 660
Goody *v.* Carter (1847) 9 Q. B. 863 647
Gott *v.* Gandy (1853) 2 El. & Bl. 845; 2 C. L. R. 392; 23 L. J. Q. B. 1; 18 Jur. 310; 2 W. R. 38 637
Grand Junction Canal Co. *v.* Dimes (1846) 15 Sim. 402; 17 L. J. Ch. 206; 12 Jur. 886 590
Graves *v.* Weld (1883) 5 B. & Ad. 105; 2 N. & M. 725; 2 L. J. K. B. 176 575
Graves *v.* Wells (1839) 10 A. & E. 427 549
Greene *v.* Cole (1670) 2 Wms. Saund. 252 n 576
Gray *v.* Duke of Northumberland (1806) 13 Ves. 236 592
Griggs *v.* Gibson (1866) 14 W. R. 819 585
Gulliver *v.* Vaux (1746) 3 De M. & G. 167 n 559

Habergham *v.* Vincent (1791) 5 T. R. 92 590
Habergham *v.* Vincent (1793) 2 Ves. Jr. 209; 4 Bro. C. C. 353 663
Hall *v.* City of London Brewery Co. (1862) 2 B. & S. 737; 31 L. J. Q. B. 257; 9 Jur. (N. S.) 18 635
Hamerton *v.* Stead (1824) 3 B. & C. 478; 5 D. & R. 206; 3 L. J. (O. S.) K. B. 33; 27 R. R. 407 643
Hanbury, *Re* [1904] 1 Ch. 415 559
Hankey *v.* Martin (1883) 49 L. T. 560 570, 571
Hannaford *v.* Hannaford (1871) L. R. 7 Q. B. 119 655
Hardcastle *v.* Dennison (1861) 4 L. T. 707 586
Hardon *v.* Hesketh (1859) 4 H. & N. 175 549
Hare *v.* Burges (1857) 4 K. & J. 45; 27 L. J. Ch. 86; 3 Jur. (N. S.) 1294; 6 W. R. 144 617
Harnett *v.* Maitland (1847) 16 M. & W. 257; 4 D. & L. 545; 16 L. J. Ex. 134 647
Harris *v.* Booker (1827) 4 Bing. 96; 12 Moore, 283; 5 L. J. (O. S.) C. P. 92 652
Harris *v.* Jays (1599) Cro. Eliz. 699 585
Hart *v.* Windsor (1842) 12 M. & W. 68; 13 L. J. Ex. 129; 8 Jur. 150 636
Hatter *v.* Ash (1696) 1 Ld. Raym. 84 614
Hayes *v.* Foorde (1770) 2 D. Bl. 698 660
Hayward *v.* Raw (1861) 6 H. & N. 308 591
Heath *v.* Deane [1905] 2 Ch. 86; 74 L. J. Ch. 466; 96 L. T. 643; 21 T. L. R. 404 606
Helier *v.* Okeden (1560) Moo. 14 656

PAGE

Hext *v.* Gill (1872) L. R. 7 Ch. App. 699; 41 L. J. Ch. 761; 27 L. T. 291; 20 W. R. 957 594
Heydon's Case (1584) 3 Rep. 7 a 589
Heyward's Case (1595) 2 Rep. 34 b, 35 a 609, 652
Hilbers *v.* Parkinson (1883) 25 Ch. D. 200; 53 L. J. Ch. 194; 49 L. T. 502; 32 W. R. 315 570
Hilton *v.* Earl Granville (1844) 5 Q. B. 701; Dav. & M. 614; 14 L. J. Q. B. 193 586, 594
Hinde *v.* Lyon (1577) 3 Leon. 64 664
Hitchman *v.* Walton (1838) 4 M. & W. 409; 1 H. & H. 374; 8 L. J. Ex. 31 642, 645
Hodgeson *v.* Burron (1734) 3 P. Wms. 262 580
Hodgkinson *v.* Crowe (1875) L. R. 10 Ch. App. 662; 44 L. J. Ch. 680; 33 L. T. 388; 23 W. R. 885 633
Holder *v.* Taylor (1614) Hob. 12 635
Holder and Sulyard *v.* Preston (1769) 2 Wils., at p. 401 595
Hole, *Re* [1906] 1 Ch. 673; 75 L. J. Ch. 362; 94 L. T. 451 553
Holford *v.* Hatch (1779) 1 Doug. 1779 626
Holland *v.* Hatton (1697) Carth. 414 642
Holmes *v.* Godson (1746) 3 De G. M. & G. 152 559
Honywood *v.* Honywood (1874) L. R. 18 Eq. 306; 43 L. J. Ch. 652; 30 L. T. 671; 22 W. R. 749 574
Hope *v.* Corporation of Gloucester (1855) 7 De G. M. & G. 647; 25 L. J. Ch. 145; 2 Jur. (N. S.) 27; 4 W. R. 138 616
Hopkins *v.* Hopkins (1734) Cas. *temp.* Talb. 44 658
Horsey Estate, Ld. *v.* Steiger [1899] 2 Q. B. 79; 68 L. J. (Q. B.) 743; 80 L. T. 857; 47 W. R. 644; 15 T. L. R. 367 629
Howard *v.* Shaw (1841) 8 M. & W. 118 619, 643
Howe *v.* Howe (1686) 1 Vern. 415 597
Hughes, *Re* [1906] 2 Ch. 642; 75 L. J. Ch. 784; 95 L. T. 379 566
Hughes *v.* Parker (1841) M. & W. 244 557
Hunter's and Hewlett's Contract [1907] 1 Ch. 46; 76 L. J. Ch. 26; 95 L. T. 674 573
Huntley's Case (1572) Dyer, 326 656
Hutt, *Re* (1839) 7 D. P. C. 690; 3 Jur. 1105 593

Idle *v.* Cook (1705) 1 P. Wms. 70 666
Iggulden *v.* May (1806) 7 East, 237 617
Ingle *v.* Vaughan Jenkins [1900] 2 Ch. 368; 69 L. J. Ch. 618; 83 L. T. 155; 48 W. R. 684 553
Inman, *Re* [1903] 1 Ch. 241; 72 L. J. Ch. 120; 88 L. T. 173; 51 W. R. 188 579
Iseham *v.* Morrice (1628) Cro. Car. 109 608, 609
Isteed *v.* Stonelay (1580) 1 And. 82 616

J. L. *v.* Potkin (1522) Y. B. 14 Hen. VIII., Mich., at fo. 14 613
J. S. (Case of) (1585) 1 Leon. 33 560
Jackman *v.* Hoddesdon (1594) Cro. Eliz. 351 548, 590
Jaques *v.* Millar (1877) 6 Ch. D. 153; 47 L. J. Ch. 544; 37 L. T. 151; 25 W. R. 846 614
Jefferson *v.* Jefferson (1682) Lev. 130 667
Jenkins *v.* Price [1908] 1 Ch. 10; 77 L. J. Ch. 41; 97 L. T. 734; 24 T. L. R. 70; 14 Mans. 343 630, 631
Jenkins *v.* Price [1907] 2 Ch. 229; 76 L. J. Ch. 507; 23 T. L. R. 608 631

PAGE

Jesson *v.* Wright (1820) 2 Bligh, 1; 21 R. R. 1 660
Jinks *v.* Edwards (1856) 11 Exch. 775; 4 W. R. 303 611
Johns *v.* Pink [1900] 1 Ch. 296; 69 L. J. Ch. 98; 81 L. T. 712; 48 W. R. 246; 16 T. L. R. 70 632
Johnson, *Re* [1894] 1 Mans. 54 632
Johnson Johnson, *Re* [1904] 1 K. B. 134; 73 L. J. (K. B.) 220; 90 L. T. 61; 52 W. R. 304; 11 Mans. 14 577
Johnston, *Re* (1884) 26 Ch. D. 538; 53 L. J. Ch. 645; 52 L. T. 44; 32 W. R. 634 578
Jones, *Re* [1910] 1 Ch. 167; 79 L. J. Ch. 34; 101 L. T. 549 562
Jones *v.* Davies (1861) 7 H. & N. 507 552
Jones *v.* Lavington [1903] 1 K. B. 253; 72 L. J. K. B. 98; 88 L. T. 223; 51 W. R. 161; 19 T. L. R. 77 635
Joyner *v.* Weeks [1891] 2 Q. B. 31; 60 L. J. (Q. B.) 510; 65 L. T. 16; 39 W. R. 583; 55 J. P. 725 610, 611, 612, 613

Keates *v.* Earl Cadogan (1851) 10 C. B. 591 636
Keech *v.* Hall (1778) 1 Dougl. 22 642, 646
Kemeys-Tynte, *Re* [1892] 2 Ch. 211; 61 L. J. Ch. 377; 66 L. T. 752; 40 W. R. 423 574
Keyse *v.* Powell (1853) 2 E. & B. 132; 22 L. J. (Q. B.) 305; 17 Jur. 1052 594
Kinch *v.* Ward (1825) 2 Sim. & S. 409; 4 L. J. (O. S.) Ch. 28 659
Kirsley *v.* Duck (1712) 2 Vern. 684 614
Kitchen *v.* Palmer (1877) 46 L. J. Ch. 611 557
Kusel *v.* Watson (1879) 11 Ch. D. 129; 48 L. J. Ch. 413; 27 W. R. 714 573

Lane *v.* Cox [1897] 1 Q. B. 415; 76 L. T. 135; 45 W. R. 261; 66 L. J. Q. B. 193 636
Latham *v.* Atwood (1635) Cro. Car. 515 575
Lea *v.* Thursby [1904] 2 Ch. 57; 73 L. J. Ch. 518; 90 L. T. 667; 20 T. L. R. 470; 11 Mans. 151 553
Leach *v.* Thomas (1835) 7 C. & P. 327 626
Leathes *v.* Leathes (1877) 5 Ch. D. 221; 46 L. J. Ch. 562; 36 L. T. 646; 25 W. R. 492 574
Lechmere and Lloyd, *Re* (1881) 18 Ch. D. 524; 45 L. T. 551 658
Lee *v.* Smith (1854) 9 Exch. 662; 23 L. J. Ex. 198; 2 W. R. 377; 2 C. L. R. 1079 618
Leeds, Duke of, *v.* Earl of Stratford (1798) 4 Ves. 180 593
Legg *v.* Strudwick (1709) 2 Salk. 414 619
Lemprière *v.* Martin (1777) 2 W. Bl. 1148 597, 598
Lewis *v.* Baker [1905] 1 Ch. 46; 74 L. J. Ch. 39; 21 T. L. R. 7; 54 W. R. 146 611
Lewis *v.* Baker (No. 2) [1906] 2 K. B. 599; 75 L. J. K. B. 848; 95 L. T. 10; 22 T. L. R. 680 618
Lewis *v.* Branthwaite (1831) 2 B. & Ad. 437; 9 L. J. (O. S.) K. B. 263 594
Lewis *v.* Lane (1834) 2 Myl. & K. 449 586
Lilford (Lord) *v.* A. G. (1867) L. R. 2 H. L. 63; 36 L. J. Ex. 116; 16 L. T. 184; 15 W. R. 595 555
Lilford's Case (1614) 11 Rep. 49 a 560
Lingwood *v.* Gyde (1866) L. R. 2 C. P. 72; 36 L. J. C. P. 10; 16 L. T. 229; 15 W. R. 311 584
Llewelyn *v.* Williams (1610) Cro. Jac. 258 614
Loddington *v.* Kime (1694) 1 Salk. 224 656
L. & N. W. Ry. Co. *v.* West (1867) L. R. 2 C. P. 553; 36 L. J. C. P. 245 550

PAGE

London, Mayor and Corporation of, *Re* [1910] 2 Ch. 314; 79 L. J. Ch. 622; 103 L. T. 20; 54 Sol. Jo. 562 616
London School Board, *Ex parte* [1889] 41 Ch. D. 547; 58 L. J. Ch. 752; 60 L. T. 817; 38 W. R. 61 606
Lovell *v.* Lovell (1743) 3 Atk. 11 590
Low *v.* Burron (1734) 3 P. Wms. 262 580
Ludwell *v.* Newman (1795) 6 T. R. 458; 3 R. R. 231 612
Lutterel *v.* Weston (1611) Cro. Jac. 308 590

Machil *v.* Clark (1702) 2 Salk. 619 570
Machu, *Re* (1882) 21 Ch. D. 838; 47 L. T. 577; 30 W. R. 837 558, 559
Macleay, *Re* (1875) L. R. 20 Eq. 186; 44 L. J. Ch. 441; 32 L. T. 682; 23 W. R. 718 558
Macnamara *v.* Dillon (1883) 11 Ir. R. (Ch.) 29 660
Magdalen College Hospital *v.* Knotts (1879) L. R. 4 App. Cas. 324; 48 L. J. Ch. 579; 40 L. T. 466; 27 W. R. 602 618
Major *v.* Brandword (1630) Cro. Car. 260 551
Mallinson *v.* Siddle (1870) 39 L. J. Ch. 426; 18 W. R. 569 590
Mannox *v.* Greener (1872) L. R. 14 Eq. 456; 27 L. T. 408 556, 562
Markham *v.* Paget [1908] 1 Ch. 697; 77 L. J. Ch. 451; 98 L. T. 605; 24 T. L. R. 426 635
Marshall *v.* Berridge (1881) 19 Ch. D. 233; 51 L. J. Ch. 329; 45 L. T. 599; 46 J. P. 279; 30 W. R. 93 614
Mayhew *v.* Suttle (1854) 4 E. & B. 347; 3 C. L. R. 59; 24 L. J. Q. B. 54; 1 Jur. (N. S.) 303; 3 W. R. 108 643
Medows, *Re* (1898) 1 Ch. 300; 67 L. J. Ch. 145; 78 L. T. 13; 46 W. R. 297 596
Melling *v.* Leak (1855) 16 C. B. 652; 3 C. L. R. 1017; 24 L. J. C. P. 187; 1 Jur. (N. S.) 759; 3 W. R. 595 643, 644
Melwich *v.* Luter (1588) 4 Rep. 26 590
Meredith *v.* Joans (1632) Cro. Car. 244 573
Merttens *v.* Hill [1901] 1 Ch. 842; 70 L. J. Ch. 489; 65 J. P. 312; 49 W. R. 408; 17 T. L. R. 289 607
Messenger *v.* Armstrong (1785) 1 T. R., at p. 154 619
Meux *v.* Cobley [1892] 2 Ch. 253; 61 L. J. Ch. 449; 66 L. T. 86 577, 626
Mildmay *v.* Hungerford (1691) 2 Vern. 245 590
Mildway's Case (1606) 6 Rep. 40 a 564
Mills *v.* Capel (1875) L. R. 20 Eq. 692; 44 L. J. Ch. 674; 33 L. T. 158 570
Mollineux *v.* Powell (1730) 1 P. Wms., at p. 268 n 577, 668
Monckton *v.* Payne [1899] 2 Q. B. 603; 68 L. J. Q. B. 951; 81 L. T. 204; 48 W. R. 44; 15 T. L. R. 531 591
Monypenny *v.* Dering (1847) 16 M. & W. 418 661
Morgan *v.* Morgan (1870) L. R. 10 Eq. 99; 39 L. J. Ch. 493; 22 L. T. 595; 18 W. R. 744 666
Morgan *v.* Scudamore (1677) 2 Ch. Rep. 70 595
Mortimer, *Re* [1905] 2 Ch. 502; 74 L. J. Ch. 745; 93 L. T. 459 659, 661
Morton *v.* Woods (1868) L. R. 3 Q. B. 658 640, 641
Moss *v.* Gallimore (1779) 1 Dougl. at p. 283 646
Moule *v.* Garrett (1872) L. R. 7 Exch. 101; 41 J. Ex. 62; 26 L. T. 367; 20 W. R. 416 632
Mount Edgecumbe, Earl of, *v.* Inland Revenue Commissioners [1911] 2 K. B. 24; 80 L. J. K. B. 503; 27 T. L. R. 298 551, 616
Mousley *v.* Ludlam (1851) 21 L. J. Q. B. 64; 15 Jur. 1107 625
Muller *v.* Trafford [1901] 1 Ch. 54; 70 L. J. Ch. 72; 49 W. R. 132 616

PAGE

Murphy *v.* Ford (1855) 5 Ir. C. L. R. 19 647
Murthwaite *v.* Jenkinson (1824) 2 B. & C. 357; 3 B. & C. 191; 3 D. & R. 764; 26 R. R. 384 580
Musgrave *v.* Brooke (1884) 26 Ch. D. 792; 54 L. J. Ch. 102; 33 W. R. 211 655

Nash, *Re* [1910] 1 Ch. 1; 79 L. J. Ch. 1; 101 L. T. 837; 26 T. L. R. 57; 54 Sol. Jo. 48 661
Nash *v.* Earl of Derby (1705) 2 Vern. 537 592
Nash *v.* Preston (1630) Cro. Car. 190 609
Nepean *v.* Budden (1822) 5 B. & Ald. 626 550
Newman *v.* Newman (1760) 2 Wils. 125 558
Nicholl *v.* McKaeg (1830) 10 B. & C. 721 644
Nightingale *v.* Lawson (1785) 1 Bro. C. C. 440 596
Northen *v.* Carnegie (1859) 4 Drew, 587; 28 L. J. Ch. 930; 9 W. R. 481 578
Northumberland, Duke of, *v.* Tynemouth [1909] 2 K. B. 374; 78 L. J. K. B. 767; 100 L. T. 930; 73 J. P. 326 590
Norton *v.* Freeker (1737) 1 Atk. 523 580

Ocean Accident Co. *v.* Ilford Gas Co. [1905] 2 K. B. 493; 74 L. J. K. B. 799; 93 L. T. 381; 21 T. L. R. 610 612
Odiham *v.* Smith (1593) Cro. Eliz. 589 551
Oland's Case (1602) 5 Rep. 116 b 644
Osborne *v.* Amalgamated Society [1911] 1 Ch. 540; 80 L. J. Ch. 315; 104 L. T. 267; 27 T. L. R. 289 xliii
Osbourn *v.* Rider (1606) Cro. Jac. 133 614
Ossulston's (Lord) Case (1708) 3 Salk. 336 562
Otlery Monastery Case (1583) 1 Leon. 4 592
Owen, *In re* (1878) 10 Ch. D. 166; 48 L. J. Ch. 248; 27 W. R. 305 583

Page *v.* Hayward (1704) 2 Salk. 570 561
Palmer *v.* Edwards (1783) 1 Doug. 186 n 636
Parfitt *v.* Hember (1867) L. R. 4 Eq. 443 657, 661
Parker *v.* Combleford (1599) Cro. Eliz. 725 586
Parker *v.* Harris (1692) 1 Salk. 262 621
Parker *v.* Jones [1910] 2 K. B. 32; 79 L. J. K. B. 921; 102 L. T. 685; 26 T. L. R. 453 627
Parker *v.* Thomas (1842) 3 Man. & G. 815 587
Parkin *v.* Radcliffe (1798) 1 Bos. & P. 282; 4 R. R. 797 586
Parmenter *v.* Webber (1818) 8 Taunt. 593; 2 Moore, 656; 20 R. R. 575 626
Partridge *v.* Bere (1822) 5 B. & Ald. 604; 1 D. & R. 272; 24 R. R. 487 642
Paul *v.* Nurse (1828) 8 B. & C. 486; 2 M. & Ry. 525; 7 L. J. (O. S.) K. B. 12 632
Pay's Case (1601) Cro. Eliz. 878 656, 658
Peaceable *v.* Watson (1811) 4 Taunt. 16; 13 R. R. 552 557
Peachy *v.* Duke of Somerset (1721) Pre. Cha. 567 592, 593
Pelham-Clinton *v.* Duke of Newcastle [1902] 1 Ch. 34 562
Pells *v.* Brown (1620) Cro. Jac. 590 664
Pemberton *v.* Barnes [1899] 1 Ch. 544; 68 L. J. Ch. 192; 80 L. T. 181; 47 W. R. 444 652
Pennant's Case (1596) 3 Rep. 65 615
Pennington *v.* Tanière (1848) 12 Q. B. 998 618
Perrin *v.* Blake (1769) 1 W. Bl. 672; (1772) 4 Burr. 2579; 1 Dougl. 329 n 660
Perry *v.* Phelips (1790) 1 Ves. Jr., at p. 255 664
Petty *v.* Evans (1610) 2 Brownl. 40 585

PAGE

Phypers *v.* Eburn (1836) 3 Bing. (N. C.) 250 ; 3 Scott, 634 ; 2 Hodges, 230 ; 6 L. J. C. P. 20 598
Pickersgill *v.* Grey (1861) 30 Beav. 352 ; 31 L. J. Ch. 394; 8 Jur. (N. S.) 632 ; 5 L. T. 706 ; 10 W. R. 207 663
Pickett *v.* Packham (1868) L. R. 4 Ch. App. 190 ; 16 W. R. 1177 551
Piggott *v.* Middlesex County Council [1909] 1 Ch. 134 ; 77 L. J. Ch. 813 ; 99 L. T. 662 ; 72 J. P. 461 ; 52 Sol. Jo. 698 ; 6 L. C. R. 1177 629
Pigot *v.* Bullock (1792) 1 Ves. Jr. 479 ; 3 Bro. C. C. 589 ; 2 R. R. 148 668
Pinhorn *v.* Souster (1853) 8 Exch. 763 ; 22 L. J. Ex. 266 ; 16 Jur. 1001 ; 1 W. R. 336 644, 647
Piper *v.* Piper (1860) 1 J. & H. 91 ; 29 L. J. Ch. 719 ; 6 Jur. (N. S.) 1026 ; 2 L. T. 458 ; 8 W. R. 543 589
Playford *v.* Hoare (1829) 3 Y. & J. 175 ; 32 R. R. 793 553
Pomfret *v.* Ricroft (1670) 1 Wms. Saund. 321 637
Pomfret, Earl, *v.* Lord Windsor (1752) 2 Ves. Sen. 482 643
Poole *v.* Nedham (1608) Yelv. 149 560
Portington's (Mary) Case (1614) 10 Rep. 35 a, 42 a 560, 563, 564
Portland, Duke of, *v.* Hill (1866) L. R. 2 Eq. 765 ; 35 L. J. Ch. 439 ; 12 Jur. (N. S.) 286 ; 15 W. R. 38 584, 594, 606, 607
Powsley *v.* Blakeman (1622) 2 Rolle, 284 642, 643
Prince's (The) Case (1605) 8 Rep., at p. 17 a 560
Pugh *v.* Duke of Leeds (1777) 2 Cowp. 714 615
Purefoy *v.* Rogers (1671) 2 Wms. Saund. 380 657

Quarm *v.* Quarm [1892] 1 Q. B. 184 ; 61 L. J. Q. B. 154 ; 66 L. T. 418 ; 40 W. R. 302 573
Queen *v.* Dendy (1852) 22 L. J. Q. B. 39 ; 1 B. C. C. 111 593
Queen *v.* Ham (1839) 8 L. J. Q. B. (N. S.) 265 593
Queen *v.* Lord Wellesley (1853) 2 E. & B. 924 591

R. *v.* Bongbey (1823) 1 B. & C. 565 ; 25 R. R. 516 595
R. *v.* Brewer's Co. (1824) 3 B. & C. 172 ; 4 D. & R. 492 ; 27 R. R. 318 593
R. *v.* Coggan (1805) 6 East, 431 593
R. *v.* Dare (1861) 2 F. & F. 355 594
R. *v.* Dillington (1689) Freem. K. B. 494 595
R. *v.* Dullingham (1838) 8 A. & E. 858 ; 1 P. & D. 172 ; 1 W. W. & H. 865 ; 8 L. J. Q. B. 37 598
R. *v.* Hendon (1788) 2 T. R. 484 591, 593
R. *v.* Hornchurch (1818) 2 B. & Ald. 189 558
R. *v.* Rennett (1788) 2 T. R. 197 593
R. *v.* Winter (1705) 2 Salk. 588 646
R. *v.* Woodham Walter (1869) 100 B. & S. 439 598
Rabbeth *v.* Squire (1859) 4 De G. & J. 406 ; 28 L. J. Ch. 565 ; 7 W. R. 657 657
Radcliffe, *Re* [1892] 1 Ch. 227 ; 61 L. J. Ch. 186 ; 66 L. T. 363 ; 40 W. R. 323 552
Randall *v.* Scory (1633) Cro. Car. 313 551
Rayer *v.* Strickland (1842) 2 Q. B. 792 558, 585
Rawlings *v.* Walker (1826) 5 B. & C., at p. 118 611, 613
Read *v.* Snell (1743) 2 Atk. 649 580
Reay *v.* Huntington (1803) 4 East, 271 607
Rede *v.* Farr (1817) 6 M. & S. 121 ; 18 R. R. 329 615
Rennington *v.* Cole (1618) Noy, 29 592
Richardson *v.* Harrison (1885) 16 Q. B. D. 85 ; 55 L. J. Q. B. 58 ; 54 L. T. 456 659

PAGE

Richardson *v.* Kensit (1845) 5 M. & G. 485; 6 Scott (N. R.) 419; 12 L. J. C. P. 154; 7 Jur. 856 597
Richardson *v.* Langridge (1811) 4 Taunt. 128 618
Richardson *v.* Sydenham (1705) 2 Vern. 447 616
Rickett *v.* Green [1910] 1 K. B. 253; 79 L. J. K. B. 193; 102 L. T. 16 629
Ricketts *v.* Enfield Churchwardens [1909] 1 Ch. 544; 78 L. J. Ch. 294; 100 L. T. 362 628
Ridge's Trusts, *Re* (1872) L. R. 7 Ch. App. 665; 41 L. J. Ch. 787; 27 L. T. 141; 20 W. R. 878 655
Right *v.* Darley (1786) 1 T. R. 159 618, 619
Rising, *Re* [1904] 1 Ch. 533; 73 L. J. Ch. 455; 90 L. T. 504 661
Robertson *v.* Gardiner (1852) 12 C. B. 319 608
Robinson *v.* Bousfield (1844) 6 Q. B. 492 590
Robinson *v.* Milne (1884) 53 L. J. Ch. 1070 623
Roddy *v.* Fitzgerald (1857) 6 H. L. C. 823 660
Roe *v.* Lees (1778) 2 W. Bl. 1171 618
Rose *v.* Kempthorne (1910) 103 L. T. 730; 75 J. P. 71; 55 Sol. Jo. 126; 27 T. L. R. 132 xliii
Rosher, *Re* (1884) 26 Ch. D. 801; 53 L. J. Ch. 722; 51 L. T. 785; 32 W. R. 825 558
Rouse's Case (1587) Owen, 28 647
Rundle *v.* Rundle (1691) 2 Vern. 252 597
Ryan *v.* Clarke (1849) 14 Q. B., at p. 73 612

Salisbury, Marquis of, *v.* Gladstone (1861) 9 H. L. C. 692; 34 L. J. C. P. 222; 4 L. T. 849; 8 Jur. (N. S.) 625; 9 W. R. 930 586
Salmon *v.* Swann (1621) Cro. Jac. 619 611
Saltern *v.* Saltern (1742) 2 Atk. 376 578
Salts *v.* Battersby [1910] 2 K. B. 155; 79 L. J. K. B. 937; 102 L. T. 730 622
Sands to Thompson (1883) 22 Ch. D. 614; 52 L. J. Ch. 406; 48 L. T. 210; 31 W. R. 397 643
Saunders *v.* Musgrave (1827) 6 B. & C. 524; 9 D. & R. 529; 2 Car. & P. 294; 5 J. (O. S.) K. B. 192; 30 R. R. 414 643
Savil *v.* Savil (1727) 11 Vin. *Ab.* 154 563
Say *v.* Smith (1561) Plowd. 269 608
Scatterwood *v.* Edge (1697) 1 Salk. 229 664
Scobie *v.* Collins (1895) 1 Q. B. 375; 64 L. J. Q. B. 10; 71 L. T. 775; 15 R. 6 644
Seagram *v.* Knight (1867) L. R. 2 Ch. App., at p. 632 576, 667
Searle *v.* Cooke (1890) 43 Ch. D. 519; 59 L. J. Ch. 259; 62 L. T. 221 593, 606
Selby *v.* Greaves (1868) L. R. 3 C. P. 594; 37 L. J. C. P. 251; 19 L. T. 186; 16 W. R. 1127 621
Selous, *Re* [1901] 1 Ch. 921; 70 L. J. Ch. 402; 84 L. T. 318; 49 W. R. 440 553
Sevenoaks Ry. Co. *v.* L. C. & D. Ry. Co. (1879) 11 Ch. D. 625; 48 L. J. Ch. 513; 40 L. T. 545; 27 W. R. 672 608
Seymor's (Edward) Case (1612) 10 Rep. 97 b, 98 a 560, 565, 579
Shelley's Case (1579) 1 Rep. 219 659, 660, 661
Shields *v.* Atkins (1747) 3 Atk., at p. 563 560
Shoplane *v.* Roydler (1605) Cro. Jac. 98 585
Shrewsbury's, Countess of, Case (1600) 5 Rep. 13 b 647
Shrubb, *Re* [1910] W. N. 143; 45 L. J. N. C. 390; 129 L. T. Jo. 182 667
Shuttleworth *v.* Garnet (1687) 3 Mod. 240 591
Sidebotham *v.* Holland [1895] 1 Q. B. 378; 64 L. J. (Q. B.) 200; 72 L. T. 62; 43 W. R. 228; 14 R. 135 615
Simpson *v.* Simpson (1838) 4 Bing. N. C. 333 652

PAGE

Sitwell *v.* Worrall (1898) 79 L. T. 86 594
Slade *v.* Pattison (1834) 5 L. J. Ch. 51 548, 580, 581
Smith *v.* Baker (1737) 1 Atk. 385 597
Smith *v.* Day (1837) 2 M. & W. 684; M. & H. 135; 6 L. J. Ex. 219 611
Smith *v.* Malings (1607) Cro. Jac. 160 622
Smith *v.* Marrable (1843) 11 M. & W. 5; Car. & M. 479; 12 L. J. Ex. 223 636
Smith *v.* Widlake (1877) 3 C. P. D. 10; 47 L. J. Q. B. 282; 26 W. R. 52 641
Snow *v.* Boycott [1892] 3 Ch. 110; 61 L. J. Ch. 591; 66 L. T. 762; 40 W. R. 603 458
Soane *v.* Ireland (1808) 10 East, 259 584
Sonday's Case (1611) 9 Rep. 127 b 666
Soobie *v.* Collins [1895] 1 Q. B. 375; 64 L. J. Q. B. 10; 71 L. T. 775; 15 R. 6 642
South of England Dairies Co. *v.* Baker [1906] 2 Ch. 631; 76 L. J. K. B. 78; 96 L. T. 48 629
Spark *v.* Spark (1559) Cro. Car. 305 647
Spencer's Case (1583) 5 Rep. 16 628, 629
Stafford, Earl of, *v.* Buckley (1750) 2 Ves. Sen., at p. 180 656
Stafford's Case (1609) 8 Rep. 73 a, 75 a 552, 553, 570, 640
Standen *v.* Chrismas (1847) 10 Q. B. 135; 16 L. J. Q. B. 265; 11 Jur. 694 588, 629
Stephens *v.* Bridges (1821) 6 Madd. 66; 22 R. R. 242 553
Stevens *v.* Tyrell (1753) 2 Wils. 1 586
Stone *v.* Newman (1635) Cro. Car., at p. 428 564, 570
Strachy *v.* Francis (1741) 2 Atk. 217 575
Styant *v.* Staker (1691) 2 Vern. 250 605
Sutton *v.* Stone (1740) 2 Atk. 101 590
Sutton *v.* Temple (1843) 12 M. & W. 52; 13 L. J. Ex. 17 636
Sutton's Hospital Case (1612) 10 Rep., at 26 b 662
Swan *v.* Stransham (1567) Dyer, 257 a 635
Swinburne *v.* Milburn (1884) L. R. 9 App. Cas. 844; 54 L. J. Q. B. 6; 52 L. T. 222; 33 W. R. 325 617

Tapner *v.* Merlott (1739) Willes, at p. 180 658, 659
Taylor *v.* Ashe (1633) Vin. *Ab.* X, 396 640, 641
Taylor *v.* Shum (1797) 1 B. & P. 21; 4 R. R. 759 632
Tewart *v.* Lawson (1874) L. R. 18 Eq. 490; 43 L. J. Ch. 673; 22 W. R. 822 574
Thompson *v.* Hardinge (1845) 1 C. B. 940; 14 L. J. C. P. 268; 9 Jur. 927 607
Thong *v.* Bedford (1815) 4 M. & S. 362 660
Threlfall, *Re* (1880) 16 Ch. D. 274; 50 L. J. Ch. 318 641
Throgmorton *v.* Tracey (1555) Dyer, 124 b 650
Tilbury *v.* Silva (1890) 45 Ch. D. 98; 63 L. T. 141 605
Tiping *v.* Bunning (1597) Moore, 465 598
Tisdall *v.* Essex (1616) 3 Bulstr. 204 616
Tomes *v.* Chamberlain (1839) 5 M. & W. 14 644
Took *v.* Glascock (1669) 1 Wms. Saund. 250 570
Torriano *v.* Young (1833) 6 C. & P. 8 626
Treloar *v.* Bigge (1874) L. R. 9 Exch. 151; 43 L. J. Ex. 95; 22 W. R. 843 630
Trent *v.* Hunt (1853) 9 Exch. 14; 22 L. J. Ex. 318; 17 Jur. 899; 1 W. R. 481 646
Tresidder *v.* Tresidder (1841) 1 Q. B. 416 590
Trevanion, *Re* [1910] 2 Ch. 538; 103 L. T. 212; 54 Sol. Jo. 749 555, 566
Turner *v.* Bennett (1841) 11 L. J. Exch. 453; 9 M. & W. 643 642
Turner *v.* Wright (1860) 2 De G. F. & J. 234; 29 L. J. Ch. 598; 6 Jur. (N. S.) 809; 8 W. R. 675 557, 563, 668
Twining *v.* Muscott (1844) 12 M. & W. 832 591
Twisden *v.* Lock (1768) 2 Amb. 663 655, 657

PAGE

Van Grutten *v.* Foxwell [1897] A. C. 658; 66 L. J. Q. B. 745; 77 L. T. 170 660
Vane *v.* Lord Barnard (1716) 2 Vern. 738 576
Vernon *v.* Wright (1858) 7 H. L. C. 35 562
Viner *v.* Vaughan (1840) 2 Beav. 466 574

Wadham *v.* Marlowe (1785) 8 East, 314 n 549
Wainewright, *Re* (1843) 1 Phill. 258 567
Waite *v.* Jennings [1906] 2 K. B. 11; 75 L. J. K. B. 543; 54 W. R. 511; 95 L. T. 1; 22 T. L. R. 510 631, 632
Wallis *v.* Hands [1893] 2 Ch. 75; 62 L. J. Ch. 586; 68 L. T. 428; 41 W. R. 471; 3 R. 351 612
Wallwyn *v.* Lee (1803) 9 Ves. 24; 7 R. R. 142 557
Walter *v.* Yalden [1902] 2 K. B. 304; 71 L. J. K. B. 693; 87 L. T. 97; 51 W. R. 46; 18 T. L. R. 668 650
Warrington (? Harrington) *v.* Wise (1596) 2 Rolle, *Ab.* 449, 450 622
Warwick *v.* Queen's College, Oxford (1871) L. R. 6 Ch. App. 716 606
Wastneys *v.* Chappell (1714) 3 Bro. P. C. 50 580, 581
Watkins *v.* Overseers of Milton (1868) L. R. 3 Q. B. 350; 37 L. J. M. C. 73; 18 L. T. 601; 16 W. R. 1059 616
Watson *v.* Macewan [1905] A. C. 40; 74 L. J. P. C. 151; 93 L. T. 489 xliii
Webb *v.* Webb (1710) 1 P. Wms. 132 580
Webber *v.* Smith (1689) 2 Vern. 103 629
Weeks *v.* Birch (1894) 69 L. T. 759 550
Wellock *v.* Hammond (1590) Cro. Eliz. 204 664
West *v.* Errissey (1726) 2 P. Wms. 349 655
West *v.* Gwynne [1911] 2 Ch. 1 631
Western *v.* Bailey [1896] 2 Q. B. 234; 65 L. J. Q. B. 641; 75 L. T. 210 551
Western *v.* Bailey [1897] 1 Q. B. 86; 66 L. J. Q. B. 48; 75 L. T. 470; 45 W. R. 115 551
Wheeler *v.* Thorogood (1589) Cro. Eliz. 127 610
Whitbread *v.* Jenney (1804) 5 East, 522 597
Whitby *v.* Mitchell (1890) 44 Ch. D. 85; 59 L. J. Ch. 485; 62 L. T. 771; 38 W. R. 337 661
Whitby *v.* Van Luedecke [1906] 1 Ch. 783; 75 L. J. Ch. 359; 94 L. T. 432; 54 W. R. 415 654, 662
White *v.* Bayley (1861) 10 C. B. (N. S.) 227; 30 L. J. C. P. 253; 7 Jur. (N. S.) 948 643
White *v.* Summers [1908] 2 Ch. 256; 77 L. J. Ch. 506; 98 L. T. 845; 24 T. L. R. 552 657
White's and Hindle's Contract, *In re* (1877) 7 Ch. D. 201; 47 L. J. Ch. 85; 37 L. T. 574; 26 W. R. 124 656
Whitmore-Searle *v.* Whitmore-Searle [1907] 2 Ch. 332; 76 L. J. Ch. 576; 97 L. T. 160 568
Wigglesworth *v.* Dallinson (1779) 1 Dougl. 201 624
Wild's Case (1599) 6 Rep. 16 b 562
Wilkinson *v.* Hall (1837) 3 Bing. (N. C.) 508; 4 Scott, 301; 3 Hodges, 56; 6 L. J. C. P. 82 622
Williams *v.* Bosanquet (1819) 1 B. & B. 238; 3 Moore, 500; 21 R. R. 585 610, 611
Williams *v.* Duke of Bolton (1784) 1 Ves. Sen. 545 668
Williams *v.* Earle (1868) L. R. 3 Q. B. 739; 9 B. & S. 740; 37 L. J. Q. B. 231; 19 L. T. 238; 16 W. R. 1041 629
Williams *v.* Williams (1810) 12 East, 209 563
Willmott *v.* London Road Car Co. [1910] 2 Ch. 525; 103 L. T. 447; 27 T. L. R. 4; 55 Sol. Jo. 873 631

PAGE

Wilmer's Trusts, *Re* [1910] 2 Ch. 111; 79 L. J. Ch. 617; 102 L. T. 723; 54 Sol. Jo. 563 564, 568, 661
Wilson *v.* Allen (1820) 1 J. & W. 611; 21 R. R. 255 605
Wilson *v.* Finch-Hatton (1877) 2 Ex. D. 336; 46 L. J. Ex. 489; 36 L. T. 473; 25 W. R. 537 636
Wilson *v.* Phillips (1824) 2 Bing. 13 633
Wilson's Estate, *Re* (1863) 3 De G. J. & S. 410; 32 L. J. Ch. 191; 7 L. T. 722; 11 W. R. 294 596
Winchester, Bishop of, *v.* Knight (1717) 1 P. Wms. 406 584, 592
Wood *v.* Beard (1876) 2 Ex. D. 30; 46 L. J. Q. B. 100; 35 L. T. 866 642
Woodhouse *v.* Walker (1880) 5 Q. B. D. 404; 49 L. J. Q. B. 609; 42 L. T. 770; 44 J. P. 666; 28 W. R. 765 576
Woodland *v.* Mantel (1552) Plowd. 94 551
Wright *v.* Dowley (1773) 2 W. Bl. 1185 573
Wrightson, *Re* [1904] 2 Ch. 95; 73 L. J. Ch. 742; 90 L. T. 748 657, 658
Wrotesley *v.* Adams (1559) Plowd. 187 656
Wynne *v.* Cockes (1780) 1 Bro. C. C. 515 605

Yellowly *v.* Gower (1855) 11 Exch. 274; 24 L. J. Ex. 289 626

Zimbler *v.* Abrahams [1903] 1 K. B. 577; 72 L. J. K. B. 103; 88 L. T. 46; 51 W. R. 343; 19 T. L. R. 189 573
Zouche (Lord) *v.* Dalbiac (1875) L. R. 10 Exch. 172; 44 L. J. Ex. 109; 33 L. T. 221; 23 W. R. 564 551
Zouche *v.* Forse (1806) 7 East, 186 598

ERRATA AND ADDENDA IN BOOKS I AND II

Page 6. § 15. Add a sub-par. (e)

"An unincorporated association, not being in fact formed with an illegal object, may be restrained, on the application of one of its members, from expelling such member, in defiance of the rules of the association, from the benefits of membership, or ordered to re-instate him if he has been already expelled. Such re-instatement, in the case of a Trade Union, is not an attempt to enforce or recover damages for breach of an agreement, under the Trade Union Act, 1871, s. 4." (*Osborne* v. *Amalgamated Society* (No. 2) [1911] 1 Ch. 540.)

Page 71. § 156 A. Add, as new § —

"A common calendar year (not being a bissextile or leap year) consists of three hundred and sixty-five days. A bissextile or leap year consists of three hundred and sixty-six days, and occurs whenever the date of the year after Christ can be divided by four exactly; save that the year 2000 A. D., and every four hundredth year thereafter, will be a common and not a bissextile or leap year." (Calendar (New Style) Act, 1750, s. 2.)

Page 437. § 899 (v). Add at end of sub-par. : "or lawful service of process," and quote *Rose* v. *Kempthorne* (1910) XXVII T. L. R. 132.

Page 512. § 1008 (iii). Add, at foot of page —

["The privilege extends to statements made by witnesses to the solicitor of a party for the purpose of preparing a proof (*Watson* v. *McEwan* [1905] A. C. 480 (Sc.).)"]

Page 517. § 1008 (vi). Omit note in [ ].

BOOK III

PROPERTY

A—LAND

SECTION I

INTERESTS IN LAND

TITLE I—GENERAL

Interests in land

1037. Interests in land recognized by English Law are either (a) estates in possession or expectancy, or (b) interests less than estates. An estate in possession is a 'corporeal hereditament' (*ante*, Bk. I, s. 39).

['Corporeal hereditaments' were, originally, those interests which carried seisin of the freehold, i. e. possession of the land as by a free tenant. By virtue of the doctrine of tenure, each of them was deemed to have been originally created by way of a feudal gift ("feoffment") by a superior ("lord") to an inferior ("tenant"), to hold upon terms of service. This principle of tenure, which still colours the general character of English Land Law, and is the origin of some otherwise inexplicable peculiarities, was, originally, no less a principle of government than of ownership. It was based on the theory that every acre of land in the kingdom was possessed by a tenant who could be held responsible to his lord, and, ultimately, to the Crown, for any services and other liabilities due in respect of it. Consequently, a corporeal hereditament could only be conveyed by notorious transfer or taking of seisin; and the

terms "seisin" and "corporeal hereditament" became ultimately, about Littleton's time, co-extensive. Though at first the King's Courts recognized only seisin of a free tenement, i. e. under free tenure, seisin "according to the custom of the manor" came in with the recognition of the interest of the copyholder in the sixteenth century. The term "seisin" was not extended to the estate for years; because the latter was at first regarded as a merely contractual or chattel interest. But, ultimately, though it is still regarded as a chattel interest, the term "estate," and the general doctrine of tenure, were extended also to the term of years, which now ranks as a 'corporeal hereditament,' though it does not descend to heirs, and, not being a freehold, is not the subject of seisin.]

Estates

1038. The estates recognized by English Law are: — (i) estates in fee simple, (ii) estates tail, (iii) estates for life, (iv) estates held according to the custom of a manor, ("copyholds" and "customary freeholds"), (v) estates for years, (vi) estates at will. Estates rank in point of size in the order named.[a] An estate for the life of the tenant is greater than an estate *pur autre vie*.[b]

(a) It is difficult to find any express authority for this proposition; but it is implied in all statements of real property law. Any attempt to create an estate in defiance of this order would, before 1845, at least if made by feoffment, have incurred a forfeiture. There was an exception in the case of a tenant-in-tail, e. g. a life or any estate created out of an estate tail was merely defeasible on the death of the creator; unless made under the provisions of the Fines and Recoveries Act, 1833 (*Goodright* v. *Meade* (1765) 3 Burr. 1704). A lease for longer than a year by a copyholder requires, in the absence of special custom, the licence of the lord of the manor (*Jackman* v. *Hoddesdon* (1594) Cro. Eliz. 351.)

(b) *Slade* v. *Pattison* (1834) 5 L. J. Ch., at p. 57, *per* Bosanquet, L. C. *Snow* v. *Boycott* [1892] 3 Ch., at p. 115.

1039. By virtue of his tenancy, every owner of an estate in possession: — *Liabilities of tenant*

(i) must, unless he is a tenant in frankalmoigne or merely at will (*post*, Tit. VII), take the oath of fealty to his lord (if demanded);

[In practice, the oath of fealty is always "respited"; but, *semble*, the liability to take it is the origin of forfeiture by disclaimer (*post*, (iii)). The tenant at will is not bound to do fealty (Co. Litt. 63 a); nor the tenant in frankalmoigne (*ibid.*, 95 b).]

(ii) must render the services reserved at the creation of the estate;

[The tenant is liable to be sued for rent service, even though there is no express contract to pay (32 Hen. VIII (1540) c. 37; *Wadham* v. *Marlowe* (1785) 8 East, 314 n.; *Hardon* v. *Hesketh* (1859) 4 H. & N. 175); and also for rent reserved in a lease at will, though that is not rent service (Litt. s. 72).]

(iii) must not disclaim (on pain of forfeiture of his tenement) the relation of tenure expressed to be created by the grant of the estate;

Graves v. *Wells* (1839) 10 A. & E. 427. (It would seem by this case that some unequivocal act, e. g. a claim on record, or attorning to a stranger, is required as evidence of the disclaimer.)

[The provisions of the Conveyancing Act, 1881, s. 14, have no application to forfeiture occasioned by disclaimer.]

(iv) is estopped, so long as he remains in possession of the land, from denying in legal proceedings that his lord had some title

to grant the interest which such lord professed to grant ("estoppel by tenure");

Nepean v. *Budden* (1822) 5 B. & Ald. 626.
L. & N. W. Ry. Co. v. *West* (1867) L. R. 2 C. P. 553.
Weeks v. *Birch* (1894) 69 L. T. 759.

[But a tenant who admits the grant may show that the lord's interest has since expired ("No estoppel where an interest passes").]

(v) must pay, by way of relief, on succeeding to the estate as heir, a sum equal to the value, in the case of a freehold tenant, of one year's rent (if any), or, in the case of a copyhold tenant, a sum fixed by the custom of the manor;

28 Edw. I (1300) st. I, c. 4. (The date of this statute is uncertain.) Co. Litt. 91 a.
Co. *Cop.* 32.

[The liability to contribute by way of aid to ransom the lord's body captured in war was not expressly abolished by the Act of 1660 (12 Car. II, c. 24), which swept away most feudal liabilities; but, if it ever attached to socage tenure, which is doubtful, it has long been obsolete. It never attached to copyholds or terms of years.]

Incidents of reversion

1040. By virtue of his reversion, every owner of an estate in possession out of which a smaller estate has been created:—

(i) may distrain, in manner permitted or provided by law, for all rent service due from the tenant of such smaller estate in re-

spect thereof,[a] and for all reliefs payable therefor; [b]

(a) Litt. s. 226. (A lessor at will may also distrain for a yearly rent, though such rent is not rent service (Litt. s. 72; Co. Litt. 57 b).)
(b) Litt. s. 127.

[Presumably, the reversioner cannot distrain unless the tenant is or has been in possession of the land; e. g. the creator of a life estate in remainder could not distrain until the remainder had taken effect in possession.]

(ii) may seize, on the death of his tenant's ancestor or predecessor, or distrain for (as the case may be) the ancestor's or predecessor's best beast or other chattel ("heriot"), in accordance with custom or reservation;

Y. B. 21 Hen. VII (1505) Hil. pls. 15, 24.
Major v. *Brandword* (1630) Cro. Car. 260.
Austen v. *Bennet* (1693) 1 Salk. 356.
Edwards v. *Moseley* (1740) Willes, 192.
Damerell v. *Protherce* (1847) 10 Q. B. 20.
Western v. *Bailey* [1896] 2 Q. B., at p. 238.

[Heriot-service, at any rate if ancient, may be seized or distrained for; heriot customary can only be seized (*Woodland* v. *Mantel* (1552) Plowd. 94; *Odiham* v. *Smith* (1593) Cro. Eliz. 589, and Moore, 540; *Randall* v. *Scory* (1633) Cro. Car. 313.) Seizure may take place anywhere; distress only on the land in respect of which the heriot is due (*Austin* v. *Bennet*, *ubi sup.*; *Western* v. *Bailey* [1897] 1 Q. B. 86). The right to seize heriots is not barred by lapse of time under the Limitation Acts (*Lord Zouche* v. *Dalbiac* (1875) L. R. 10 Exch. 172). In the case of an estate for years terminable by lives, a heriot may be reserved on the dropping of the lives (*Williams* v. *Burrell* (1845) 1 C. B. 402; *E. of Mount Edgecumbe* v. *Commrs. of Inland Revenue* [1911] 2 K. B. 24) and in the case of an estate for a fixed term of years, on the death of a tenant or the alienation of the term (*Pickett* v. *Packham* (1868) L. R. 4 Ch. App. 190).]

(iii) is estopped, in like manner as his tenant, so long as he claims his reversionary estate, from denying in legal proceedings that he, or his predecessor in title, had some right to grant the estate which he professed to grant ("estoppel by tenure").

Corporation of Canterbury v. *Cooper* (1908) 99 L. T. 613. (This case however, shows that the doctrine of estoppel cannot be employed to validate a lease void by statute.)

[The reversioner has also the rights specified in Book II, Part II, §§ 838, 839, 851, *ante*.]

Merger

1041. Whenever an estate in land is vested in any person and is immediately followed by a larger estate in the same land, which becomes vested[a] in the same person in the same right,[b] the smaller estate is (subject to § 1067) absorbed in the larger ("merger");[c] unless it was the intention of the person conveying or acquiring either of them that their separate existence should be maintained, or unless it is for the advantage of the person in whom the estates are vested that they should continue to exist separately.[d]

(a) If one is vested and the other contingent, there is no merger (*Stafford's Case* (1609) 8 Rep. 73 a).

(b) *Jones* v. *Davies* (1861) 7 H. & N. 507. (In this case some little doubt was expressed by the Court as to whether estates in different rights did not merge at law, if the merger was brought about by the acts of the parties. But, since the passing of the Judicature Act, 1873, s. 25 (below), this question has had only an historical interest.)

(c) *Re Radcliffe* [1892] 1 Ch. 227.

[A longer term may even merge in a shorter; if the latter is expectant in reversion upon the former, and both become vested in the same person (*Stephens* v. *Bridges* (1821) 6 Madd. 66).]

(d) Judicature Act, 1873, s. 25 (4).
A. G. v. *Kerr* (1840) 2 Beav. 420 (where a lease was held to survive, though the fee had been vested in the lessee for (apparently) half a century).
Ingle v. *Vaughan Jenkins* [1900] 2 Ch., at p. 370.
Capital and Counties Bank v. *Rhodes* [1903] 1 Ch. 652.
Lea v. *Thursby* [1904] 2 Ch. 57.

[The doctrine of merger applies also to (a) coalescence of the legal estate and the corresponding equitable interest in the same land (*Re Douglas* (1884) 28 Ch. D. 327; *Re Selous* [1901] 1 Ch. 921), (b) coalescence of a charge and the estate on which it is charged (*Re French-Brewster's Settlements* [1904] 1 Ch. 713; *Re Hole* [1906] 1 Ch. 673; and *Re Gibbon* [1909] 1 Ch. 367, *Butler* v. *Rice* [1910] 2 Ch. 277), (c) coalescence of a higher with a lower obligation (*ante*, Bk. II, Part I, § 345). There is no coalescence of a true estate tail or a base fee with the estates immediately expectant thereon (*Stafford's Case* (1609) 8 Rep., at 75a; Fines and Recoveries Act, 1833, s. 39; *Re Dunsany's Settlement* [1906] 1 Ch., at p. 582). The extinguishment of satisfied terms under the Satisfied Terms Act, 1845, is very like merger; but the word is not used in the statute. It was argued in *Playford* v. *Hoare* (1829) 3 Y. & J., at p. 180, by Mr. Preston, of counsel for the successful defendant, that an estate for life executed by the Statute of Uses will never merge in a remainder at the common law. *Sed quære.*]

Interests less than estates

1042. Interests in land less than estates recognized by English Law are (i) franchises, easements, profits, advowsons, tithe rent charges, other rent charges, and offices ("hereditaments purely incorporeal"), (ii) customary rights over land, (iii) equitable interests, and (iv) tenancies at sufferance and adverse possession.

TITLE II — FREEHOLD ESTATES IN FEE SIMPLE

Fee simple

1043. An estate in fee simple is an estate which is descendible (subject to the Land Transfer Act, 1897, s. 1) to heirs general of any degree, lineal or collateral, in due order of inheritance.

Co. Litt. 1 b. (At the common law, the estate was descendible to the heirs of the person last seised. By the Inheritance Act, 1833, s. 2, the estate, on intestacy occurring since 31st December, 1833, descends, in the first instance, to the heirs of the "purchaser" (i. e. the person who last acquired the estate otherwise than by descent); but the Law of Property Amendment Act, 1859, s. 19, makes the statement in the text correct. There is no restriction of remoteness. Such an estate is, obviously, capable of enduring indefinitely. The provisions of the Land Transfer Act, 1897, s. 1, have no application to the beneficial interest in the land (*ibid.* s. 2 (2).)

Cannot be created

1044. No new estate in fee simple can be created otherwise than by the Crown;[a] except (possibly) by the following methods, viz.: —

(i) by the enfranchisement of a copyhold tenement, or by the grant by the lord of a manor of parcel of the waste (*post*, §§ 109 1 v, 1106–1116).[b]

(ii) by the barring of an estate tail, or by the enlargement of a base fee (*post*, §§ 1057, 1065).[b]

(iii) by the enlargement of a long term under

the provisions of the Conveyancing Act, 1881 (*post*, § 1155).[b]

(a) 18 Edw. I, c. 1 (*Quia Emptores*). This enactment, despite its ancient date and technical character, has important practical consequences at the present day.

(b) It is, of course, possible to argue that, in these operations, no new fee simple is created; and that the estate of the lord or reversioner is merely transferred. But, in that case, incumbrances affecting the latter would, *semble*, attach to the estate of the transferee; which can hardly have been intended. And, moreover, the doctrine of the text is supported by judicial authority (*Lord Lilford* v. *A. G.* (1867) L. R. 2 H. L., at p. 70, *per* Lord Chelmsford, C.; *Re Trevanion* [1910] 2 Ch. 538).

Words of limitation

1045. An estate in fee simple is transferred to an individual or individuals, in an assurance by deed, by the use of the words "and his heirs" after the name of the transferee,[a] or by a limitation to the heirs of a named person,[b] or, in the case of deeds executed after 31st December, 1881, by a limitation to the transferee "in fee simple."[c] In a testamentary disposition, any words signifying the testator's intention to devise such an estate will suffice, in point of form, to do so;[d] and, where there is a devise of real estate without words of limitation, such devise will be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by testament in such real estate, unless a contrary intention appears by the testament.[e]

(a) Litt. s. 1.

(b) Inheritance Act, 1833, s. 4.

(c) Conveyancing Act, 1881, s. 51. (The alternative expression allowed by the Act is technical, and must be strictly followed.

(*Ethel's and Mitchell's and Butler's Contract* [1901] 1 Ch. 945).)

(d) *Mannox* v. *Greener* (1872) L. R. 14 Eq. 456.
Crumpe v. *Crumpe* [1900] A. C. 127.

(e) Wills Act, 1837, s. 28. (The statute only applies to wills executed, revived, or republished, after 31st December, 1837. In wills of an earlier date, it was necessary, in order to pass a fee simple, to use some expression showing the testator's intention to devise his whole estate (*Gatenby* v. *Morgan* (1876) 1 Q. B. D. 685).)

Gifts to corporation

1046. In an assurance by deed to a corporation aggregate, no special words are necessary to transfer a fee simple; in an assurance by deed to a corporation sole, the words "and his successors" are necessary and sufficient to convey a fee simple.[a] *Semble*, in a devise to a corporation sole, the presumption is the same as in the case of a devise to an individual (*ante*, § 1045).[b]

(a) Co. Litt. 8 b, 94 b; *E. p. Vicar of Castle Bytham* [1895] 1 Ch. 348. (But it is said that a gift "in frankalmoigne," or "in free alms," to a religious corporation sole, passes a fee simple without the word "successors." It is the better opinion, that s. 51 of the Conveyancing Act, 1881, has no application to conveyances to corporations.)

(b) Wills Act, 1837, s. 28. The words of the section are "devised to any person"; and there is no definition of "person" in the Act. (See Interpretation Act, 1889, s. 19, which, however, does not apply to the Wills Act, 1837.)

[Of course, all assurances of land to corporations are subject to the Rule against Mortmain. But this does not prevent the property passing to the corporation.]

1047. Where one person contracts to sell land to another, the vendor is, in the absence of expressions or other circumstances to the contrary, bound to convey an estate in fee simple. (*Ante*, Bk. II, Pt. I, § 421 (b).) *Contract of sale*

Hughes v. *Parker* (1841) M. & W. 244.
Kitchen v. *Palmer* (1877) 46 L. J. Ch. 611.

1048. A person who is in possession of land is presumed, unless the contrary appears, to be seised in fee simple of the land. *Presumption of seisin in fee*

Wallwyn v. *Lee* (1803) 9 Ves., at p. 31, *per* Lord Eldon, C.
Peaceable v. *Watson* (1811) 4 Taunt. 16.
Doe v. *Penfold* (1838) 8 C. & P. 536.
Busher v. *Thompson* (1846) 4 C. B., at p. 59, *per* Coltman, J.
Asher v. *Whitlock* (1865) L. R. 1 Q. B., at p. 6, *per* Mellor, J.

1049. Subject to his liabilities towards the public and towards his neighbours (*post*, Sect. II, Tit. I and II), and to any liabilities by covenant or agreement undertaken by himself or his predecessors in title, and binding on him at law or in equity (*post*, Sect. III, Tit. II), and to any franchises, easements, or profits (*post*, Tit. IX) affecting the land, the tenant in fee simple in possession is entitled to treat the land, and everything therein and thereon, in any manner that he pleases; except that a tenant in fee simple subject to a valid executory limitation *Rights of tenant in fee simple*

over may be restrained from committing equitable waste (*post*, Sect. II, Tit. III).

Turner v. *Wright* (1860) 2 De G. F. & J. 234.
Blake v. *Peters* (1863) 1 De G. J. & S. 345. (Here the restriction was by the settlor.)

[The Judicature Act, 1873, s. 25 (3) has no application to tenants in fee. Presumably, therefore, the Court cannot award damages for equitable waste against such persons; except as a discretionary alternative under the Chancery Amendment Act, 1858, s. 2.]

Alienation of fee simple

1050. Subject to the law relating to trusts and mortgages, the beneficial owner of an estate in fee simple may transfer his estate, or may create out of it any smaller estate recognized by the law;[a] except that an estate to be held according to the custom of a manor can only be created by virtue of the custom of the manor, and on the customary terms and conditions.[b] Any condition, covenant, proviso, or limitation providing for the cesser or forfeiture of an estate in fee simple upon alienation generally, whether voluntary or involuntary,[c] and whether within a limited period or indefinitely,[d] is void;[e] but an estate in fee simple may (*semble*) be made alienable only to members of a limited class.[f]

(a) 18 Edw. I (1290) c. 1 (*Quia Emptores*). The second power is a consequence of the general principle of tenure (*ante*, § 1037, n.). It is difficult to find any express authority for it; but it is the basis of ordinary practice.
(b) *Newman* v. *Newman* (1760) 2 Wils. 125.
R. v. *Hornchurch* (1818) 2 B. & Ald. 189.
Rayer v. *Strickland* (1842) 2 Q. B. 792.
(c) *Re Machu* (1882) 21 Ch. D. 858.
(d) *Re Rosher* (1884) 26 Ch. D. 801.

(e) Litt. s. 360.
Re Dugdale (1888) 38 Ch. D. 176.
Corbett v. *Corbett* (1888) 13 P. D. 136; 14 P. D. 7.
(f) *Re Macleay* (1875) L. R. 20 Eq. 186. (But this decision was severely criticised by Pearson, J., in *Re Rosher*, *ubi sup.*)
Re Dugdale, *ubi sup.*, at p. 179, *per* Kay, J.

[It is a little doubtful whether the rule laid down by this § might not be evaded by a skilful use of a conditional limitation, e. g. "to A and his heirs to hold until" (the prohibited event happens). See expressions of Chitty, J., in *Re Machu*, *ubi sup.*, at p. 842, and of Kay, J., in *Re Dugdale*, *ubi sup.*, at p. 181. An estate created by such a limitation would be a fee simple determinable (*post*, § 1052).]

Attempted limitation over

1051. Any attempt on the part of a transferor of an estate in fee simple to arrange for the disposal of the estate after the death of the transferee, in the event of the latter not having disposed of it in his lifetime, is void.

Gulliver v. *Vaux* (1746) 3 D. M. & G. 167, n.
Holmes v. *Godson*, *ibid.* 152.
Re Dixon [1903] 2 Ch. 458.
Re Hanbury [1904] 1 Ch. 415.

[Such provision would, in effect, be an attempt to make a will for the transferee.]

Determinable fee simple

1052. A fee simple may be made determinable by any words restricting its duration to an uncertain period which may come to an end by the happening of a contingency other than the failure of the heirs of the person to whom the fee simple is limited.[a] The owner of a fee simple determinable has the same rights as the owner of an ordinary estate in fee simple

("fee simple absolute"); except that his estate will terminate, *ipso facto*, on the happening of the contingency which puts an end to the period for which it was limited.(b)

(a) *Case of J. S.* (1585) 1 Leon. 33.
Poole v. *Nedham* (1608) Yelv. 149.
Edward Seymor's Case (1612) 10 Rep. 97 b.
Lilford's Case (1614) 11 Rep. 49 a.
Ayres v. *Falkland* (1697) L. Raymond, 326, *per Curiam*.
Bagshaw v. *Spencer* (1748) 1 Ves. Sen. 142.
(b) *Mary Portington's Case* (1613) 10 Rep. 42 a.

[This last is the essential distinction between a fee simple determinable and a fee simple absolute to which a condition subsequent is annexed. The latter estate is not determined until the breach of condition is enforced; and this point may be important in relation to the barring of rights by lapse of time. For the appropriate words for each kind of limitation, see Coke's remarks in the decision last quoted; but see also the remarks of Lord Hardwicke, in *Shields* v. *Atkins* (1747) 3 Atk., at p. 563. There is considerable dispute as to the proper legal description of the determinable fees simple which are the subject of this §; but the expression would seem to be conveniently applicable to all fees descendible to heirs general which are liable to expire by the happening of any external contingency. The most common example of such fees is that conveyed by the limitation contained in a strict settlement to the settlor and his heirs until the celebration of the intended marriage.]

Intermittent fee simple

1053. A fee simple cannot be limited to take effect intermittently, i. e. to revive after it has once determined ("desultory limitation").

Co. Litt. 27 a, and Hale's note.
Corbet's Case (1599) 1 Rep. 87.
The Prince's Case (1605) 8 Rep., at p. 17 a.

[The well-known exception of the Duchy of Cornwall is limited under the express provisions of an Act of Parliament.]

TITLE III—ESTATES TAIL

1054. An estate tail is an estate which is descendible on the death of its owner to all the lineal issue of the original donee in due order of inheritance ("estate tail general"), or, in due order, to all the lineal issue of such person by a particular husband or wife or by a husband or wife of a specified class or description ("estate tail special"), or to and through the male or female lineal issue of such person or persons ("estate in tail male" (or "female") "general" (or "special")). *Estate tail*

13 Edw. I (1285) c. 1 (*De Donis Conditionalibus*).
Co. Litt. 91 *et seq.*
Page v. *Hayward* (1704) 2 Salk. 570.

[In the case of a gift to the heirs of the body of a named person, where such person takes no interest, the estate will be inheritable by all the issue, answering the description, of the named person, not merely by the issue of the first taker (Inheritance Act, 1833, s. 4).]

1055. An estate tail general is created by a limitation, in an assurance by deed, to the donee "and the heirs of his body," [a] or, in the case of deeds executed after 31st December, 1881, to the donee "in tail." [b] An estate tail special is created in an assurance by deed by a limitation to the donee "and *General and special*

the heirs of his (her) body by his (her) wife (husband)" (*naming or describing such wife or husband*).[c] An estate in tail male (or female) is created by a limitation in a deed to the donee "and the heirs male (or female) of his body";[d] or, in the case of deeds executed after 31st December, 1881, to the donee "in tail male" (or "female").[e] Any of such kinds of estate tail may be created by a devise in any words from which the testator's intention to create such kind of estate can be gathered.[f]

(a) In Littleton's day, it was necessary to add the word "begotten," or some equivalent; but by Coke's time, the word had become unnecessary (Co. Litt. 20 b). There seems to have been a good deal of uncertainty at one time about the orthodox "words of procreation." (See Butler's & Hargrave's notes to same passage.)
(b) Conveyancing Act, 1881, s. 51.
(c) Co. Litt. 20 b.
(d) *Ibid.* 24 a.
(e) Conveyancing Act, 1881, s. 51. (There appears to be no statutory form of creating an estate tail special.)
(f) *Lord Ossulston's Case* (1708) 3 Salk. 336 ("heirs males").
Vernon v. *Wright* (1858) 7 H. L. C. 35.
Mannox v. *Greener* (1872) L. R. 14 Eq. 456.
Pelham-Clinton v. *D. of Newcastle* [1902] 1 Ch. 34.

[A grant to a corporation sole and the heirs of its body would probably be held evidence of an intention to grant an estate tail to the donee in his individual capacity, at least so far as the legal estate was concerned. On the last clause of the text, it must be carefully remembered that, by the well-known resolution in *Wild's Case* (1599) 6 Rep. 16 b, a devise to a man and his "children" or "issue" does not confer on the first taker an estate tail if either (a) there is evidence in the will that the testator intended the children or issue to take by way of remainder or executory limitation (*Re Jones* [1910] 1 Ch. 167), or (b) the devise is capable, by reason of the fact that children or issue of the first taker were living at the date of the devise, of being held to pass a joint estate (*Byng* v. *Byng* (1862) 10 H. L. C. 171.) Under the old law, the joint devi-

sees in this case usually took only life estates. Now, under s. 28 of the Wills Act, 1837, they will, usually, take the whole interest of the testator.]

Rights of tenant in tail

1056. The tenant in tail in possession has the same rights to possession and user of the land as the tenant in fee simple (*ante*, § 1049);[a] except that a tenant in tail special whose spouse is dead leaving no surviving issue inheritable under the entail ("tenant-in-tail after possibility of issue extinct") may be restrained from committing equitable waste.[b]

(a) Co. Litt. 224 a.
Mary Portington's Case (1614) 10 Rep., at 39 a.
Savil v. *Savil* (1727) 11 Vin. *Ab.* 154.

(b) *Turner* v. *Wright* (1860) 2 De G. F. & J., at p. 247, *per* Lord Campbell, C. Before the Judicature Act, 1873, s. 25 (3), a tenant in tail after possibility could not be sued in tort for waste (*Williams* v. *Williams* (1810) 12 East, 209. *Quære:* since the Act).

Barring entail

1057. An estate tail cannot be transferred by act of the parties.[a] But any tenant in tail in possession, and any tenant in tail entitled to the remainder or reversion in fee immediately expectant on his estate tail (not being a tenant in tail after possibility of issue extinct,[b] or a tenant in tail whose estate tail was originally granted by the Crown and the reversion or remainder whereof is in the Crown)[c] may convert his estate tail into a fee simple by a deed enrolled in the High Court, in manner provided by

the Fines and Recoveries Act, 1833;[d] and a tenant in tail in remainder (not being such tenant as aforesaid) may, with the consent of the protector of the settlement,[e] so convert his estate tail into a fee simple or any less estate.[f] Any condition, covenant, proviso, or limitation forbidding such conversion, or providing for the cesser or forfeiture of an estate tail upon such conversion, is void.[g]

(a) *Stone* v. *Newman* (1635) Cro. Car., at p. 428, *per Curiam.*
(b) Fines and Recoveries Act, 1833, s. 18.
(c) 34 and 35 Hen. VIII (1542) c. 20, ss. 1, 2.
Fines and Recoveries Act, 1833, s. 18.
(d) *Ibid.* s. 3.
(e) *Ibid.* s. 34. (For definition of protector, see *post*, § 1059.)
(f) *Ibid.* ss. 15 and 21. (The consent may be given by a deed which does not expressly state it; if it is clear that the protector intended the remaindermen to be barred (*Re Wilmer's Trusts* [1910] 2 Ch. 111).)
(g) *Corbet's Case* (1600) 1 Rep. 84.
Mildmay's Case (1606) 6 Rep. 40 a.
Mary Portington's Case (1614) 10 Rep. 35 a.
Dawkins v. *Lord Penrhyn* (1878) L. R. 4 App. Ca., at p. 64, *per* Lord Penzance.

Base fee

1058. A disentailing assurance executed, under the provisions of the Fines and Recoveries Act, 1833, by a tenant in tail not in possession, and not entitled to the remainder or reversion in fee immediately expectant on his estate tail, without the consent of the protector of the settlement (if any), limits a base fee to the person in whose favour the assurance is executed.[a] Such base fee will *ipso facto* terminate on the failure of the issue in tail; unless in the

meantime it has been enlarged into a fee simple absolute under the provisions of the Fines and Recoveries Act, 1 33 (*post*, § 1065).[b]

(a) *Edward Seymor's Case* (1612) 10 Rep. 98 a.
Fines and Recoveries Act, 1833, ss. 22 and 34.
(b) *Ibid.* s. 19.

[The principle of the base fee is, that it lasts so long only as the estate tail of the person creating it would have lasted. Thus, if there is a limitation in remainder to A and the heirs male of his body, and B, who has inherited the estate as A's eldest son, conveys, without the consent of the protector, to C and his heirs by enrolled conveyance under the Act, C's estate, unless enlarged, ceases with the failure of A's issue male through males. A base fee is a fee simple determinable (*Edward Seymor's Case*, *ubi sup.*).]

Protector of settlement

1059. The protector of the settlement, for the purposes of § 1058, means either (i) the person or persons appointed (not exceeding three in number and not being aliens (§ 73)) by the settlor to act as such,[a] or (ii) failing such person or persons, the person or persons appointed under any power in the settlement in place of such of the persons appointed by the settlor as shall die or by deed relinquish office,[b] or (iii) failing any such person or persons, the person or persons entitled by the settlement to the first subsisting beneficial estate[c] in the land (being an estate for years determinable on the dropping of a life or lives, or any greater estate, and not being a lease at a rent),[d] notwithstanding that any such person or persons has or have alienated or encumbered such estate.[e]

(a) Fines and Recoveries Act, 1833, s. 32.
(b) *Ibid.* (The deed of relinquishment must be enrolled as a disentailing assurance.)
(c) *Ibid.* s. 25.
Re Dudson's Contract (1873) 8 Ch. D. 628.
Re Hughes [1906] 2 Ch. 642.
(d) Fines and Recoveries Act, 1833, s. 26.
(e) *Ibid.* s. 22.

[It appears to be clear, from the provisions of s. 32, that, upon an estate tail coming into possession, the powers of any specially appointed protector cease as regards such estate; though they may continue as to subsequent estates tail.]

Estates not conferring protectorship

1060. No dowress, bare trustee, heir, executor, administrator, or assign becomes protector of a settlement by virtue of any estate taken in such capacity.

Fines and Recoveries Act, 1833, s. 27.

[Trustees directed to accumulate rents until a tenant in tail reaches a given age are not 'protectors' of such estate tail; and such tenant in tail can create a fee simple by enrolled deed without their consent (*Re Trevanion* [1910] 2 Ch. 538).]

Supplementary protectors

1061. When any person is excluded under § 1060 from being protector of the settlement, the owner or owners of the next estate of the kind described in § 1059 will be protector of the settlement.[a] If the protector is of unsound mind (whether so found by inquisition or not), the Lord Chancellor, or other the person or persons for the time being entrusted by the King's sign manual with the custody of the persons and estates of persons of unsound mind, is

protector of the settlement.[b] If the protector is convicted of treason or felony,[c] or (being a person nominated by the settlor to act as protector) is an infant, or if it is uncertain whether he is alive or dead, or if the person who would otherwise be entitled by virtue of his estate to be protector has been excluded by the settlor, but no substitute appointed in his stead, or if for any other reason there is no protector existing by virtue of such estate, the Chancery Division of the High Court of Justice is protector of the settlement.[d]

(a) Fines and Recoveries Act, 1833, s. 28.
(b) *Ibid.* s. 33.
Lunacy Act, 1890, s. 108.
(c) The case of the convict, though stated, is, by a slip of the draftsman, not provided for by the section (33). The omission must be rectified by implication (*Re Wainewright* (1843) 1 Phill. 258).
(d) Fines and Recoveries Act, 1833, s. 33.

Discretion of protector

1062. The protector of the settlement, in giving or withholding his consent to a disposition by the tenant in tail, acts according to his absolute discretion, and not as a trustee. Any device, shift, or contrivance, by which it is attempted to control the free exercise of the protector's discretion, whether imposed by the settlor or entered into by the protector himself, is void.

Fines and Recoveries Act, 1833, ss. 36, 37.

Joint protectors

1063. Where two or more persons are the protector of the settlement, by virtue of the ownership of undivided shares in an estate of the kind described in § 1059, each of them is sole protector in respect of such undivided share as he could dispose of.[a] Where two or more persons are appointed by the settlor as protectors, the consent of the survivor or survivors will be sufficient to enable the tenant in tail in remainder to bar the entail; in so far as no substitute for a deceased protector has been appointed.[b]

(a) Fines and Recoveries Act, 1833, s. 23.
(b) *Cohen* v. *Bayley-Worthington* [1908] A. C. 97.

Mode of consent

1064. The consent of the protector of the settlement must be given (if at all), either by the same assurance by which the disposition by the tenant in tail is effected, or by a separate deed executed on or before the day on which such disposition is made, and enrolled at or before the time when such disposition is enrolled.[a] No consent given by a protector can be revoked.[b]

(a) Fines and Recoveries Act, 1833, s. 42, 46.
Whitmore-Searle v. *Whitmore-Searle* [1907] 2 Ch. 332.
(b) Fines and Recoveries Act, 1833, s. 44.

[Inasmuch as the protector's consent must be given either by a deed executed before or on the same day as the disposition by the tenant in tail, or by joining in such disposition itself, it follows that, if it was not given before the tenant in tail's death, it can only be given by executing such disposition. (*Whitmore-Searle* v. *Whitmore-Searle*, *ubi sup.*) It may be effectually given by an (enrolled)

deed which does not, in form, profess to give it; if it is clear from the deed that the protector intended the remaindermen to be barred. *Re Wilmer's Trusts* [1910] 2 Ch. 111.]

Enlargement of base fee

1065. A base fee is enlarged into an estate in fee simple by any of the following events, viz.: —

(i) the vesting of the immediate remainder or reversion in fee (simple) in the same land, in the person in whom such base fee is vested;

Fines and Recoveries Act, 1833, s. 39.

(ii) the execution by the person who, but for the creation of such base fee, would have been tenant in tail of the land, of a disposition, in favour of the person in whom such base fee is vested, which disposition would, but for the existence of such base fee, have passed a fee simple in such land;

Fines and Recoveries Act, 1833, s. 19.

[Such a disposition will, of course, require the consent of the protector, if any (*ibid.* s. 35). But if, after an assurance of a base fee by a trustee in bankruptcy, there ceases to be a protector of the settlement, the base fee automatically enlarges into a fee simple absolute (*ibid.* s. 60).]

(iii) the continuance in possession of the person in whose favour such base fee was created, or any person whatsoever except a person claiming in remainder on or defeasance of the estate tail, for twelve

years next after the creator of such base fee might have barred the entail without the consent of any other person.

Real Property Limitation Act, 1874, s. 6.

Covenant to settle

1066. A covenant to settle after-acquired property does not bind the covenantor to execute a disentailing assurance of an estate tail which subsequently becomes vested in him, or to grant a life estate out of it.

Re Dunsany's Settlement [1906] 1 Ch. 578 (approving *Hilbers* v. *Parkinson* (1883) 25 Ch. D. 200).

1067. Neither an estate tail,[a] nor a base fee,[b] will merge in any subsequent estate.

(a) *Stafford's Case* (1609) 8 Rep., at p. 75 a.
Re Dunsany's Settlement, ubi sup., at p. 582, *per* Romer, L. J.
(b) Fines and Recoveries Act, 1833, s. 39. (A base fee does not merge; it enlarges.)

Imperfect alienation

1068. An assurance by deed by a tenant in tail made otherwise than in conformity with the Fines and Recoveries Act, 1833, confers upon the transferee only a descendible fee, determinable, on the death of the assuror, by the heir in tail, or such less estate as is expressed by the assurance to be created or transferred.[a] A devise by a tenant in tail is absolutely void;[b] and no contract by a tenant in tail to

execute a disentailing assurance will be specifically enforced against the issue in tail or the remainderman.[c]

(a) *Stone* v. *Newman*, *ubi sup.*
Machil v. *Clark* (1702) 2 Salk. 619 (overruling *Took* v. *Glascock* (1669) 1 Wms. Saund. 250).
Miles v. *Capel* (1875) L. R. 20 Eq. 692.
Hankey v. *Martin* (1883) 49 L. T. 560 (where the estate is described, by Kay, J., as a "base fee").

[Whether the heir's right is a right of entry or a right of action? *Doe* v. *Rivers* (1797) 7 T. R. 276; *Doe* v. *Whichelo* (1799) 8 T. R. 211.]

(b) *Campbell* v. *Sandys* (1803) 1 Sch. & Lef., at p. 295, *per* Lord Redesdale.

(c) Fines and Recoveries Act, 1833, s. 47. (This section does not prevent the contract being enforced against the tenant in tail himself during his lifetime (*Bankes* v. *Small* (1887) 36 Ch. D. 716). It is generally assumed that estates tail do not pass to the personal representatives of a deceased owner under s. 1 of the Land Transfer Act, 1897.)

Confirmation

1069. When a tenant in tail has created, in favour of a purchaser for valuable consideration, a voidable estate, and has afterwards made an assurance (other than a lease not requiring enrolment) under the Fines and Recoveries Act, 1833, of any estate in the same land, such subsequent assurance, whatever its object, will, except as against a purchaser for valuable consideration without express notice of the voidable estate, have the effect of confirming such voidable estate, to the extent to which the tenant in tail could have confirmed it by disposition under the Act.

Fines and Recoveries Act, 1833, s. 38.
Crocker v. *Waine* (1854) 5 B. & S. 697.
Hankey v. *Martin* (1883) 49 L. T. 560.

[By a "voidable estate," the Act presumably means an estate defeasible by the issue in tail or the remainderman or reversioner.]

TITLE IV — ESTATES FOR LIFE

Estate for life

1070. An estate for life is an estate tenable during the life of the tenant or of some person or persons (*cestuis que vie*) other than the tenant. In the latter case it is called an estate *pur autre vie*.

Co. Litt. 41 b.

Creation

1071. An estate for the life of the tenant is limited in a deed by any words which are insufficient to limit an estate of inheritance, and do not show an intention to limit a term of years.[a] An estate *pur autre vie* is created in a deed either by a limitation to the tenant during the life of another person or persons,[b] or by a limitation made by a tenant for life of any estate other than a term of years,[c] or by a limitation without words of inheritance to a person to the use of another person for any estate other than a term of years.[d] In a devise, estates for life are created or transferred by any words from which the testator's intention to confer such an estate can be inferred. But a devise without words of limitation will not confer an estate for life; unless there are other expressions in the testament conveying such an intention, or unless, in the case of an estate *pur*

autre vie, the testator had no other interest in the land devised.[e]

(a) Co. Litt. 42 a.
Wright v. *Dowley* (1773) 2 W. Bl. 1185.
Kusel v. *Watson* (1879) 11 Ch. D. 129.
Zimbler v. *Abrahams* [1903] 1 K. B. 577.
Austin v. *Newham* [1906] 2 K. B. 167.
(b) *Brudnel's Case* (1592) 5 Co. 9.
(c) *Boddington* v. *Robinson* (1875) L. R. 10 Exch. 270.
(d) *Meredith* v. *Joans* (1632) Cro. Car. 244.
Hunter's and Hewlett's Contract [1907] 1 Ch. 46.

[*Brudnel's Case* is an authority for saying that a lease to A during the lives of B and C will continue until the death of the survivor of B and C (*Day* v. *Day* (1854) Kay, at p. 709).]

(e) Wills Act, 1837, s. 28.
Quarm v. *Quarm* [1892] 1 Q. B. 184.

[Various anomalous forms of estates for life may be imagined, e.g. an estate to A during the lives of A, B, and C and the survivor (Co. Litt. 41 b), an estate to A for life if B shall so long live, &c. But these are of small practical importance.]

Life estate in corporation

1072. A corporation may (subject to the Mortmain and Charitable Uses Acts) hold an estate *pur autre vie;* but not an estate for its own life (see § 1045). *Semble*, a corporation cannot be a *cestui que vie*.

Bacon, *Abridgement*, Tit. Corporation E, quoting Y. B. 21 Edw. IV (1482) Hil. pl. 9.

Rights of tenant for life

1073. Subject to the law relating to trusts and mortgages, the tenant for life in possession (not being a mortgagee) is entitled, subject to any dis-

position made by himself or his predecessors in title, and to any liabilities by covenant or agreement entered into by himself or his predecessors in title, and binding on him at law or in equity (*post*, Sect. III, Tit. II), and to any franchises, easements, or profits (*post*, Tit. IX) affecting the land, to possession of the land[a] and the title deeds thereof,[b] and to the enjoyment of the rents of the land,[c] and (subject to § 1076) to the produce and other profits of the soil.[d]

(a) *Tewart* v. *Lawson* (1874) L. R. 18 Eq. 490.
(b) *Garner* v. *Hannyngton* (1836) 22 Beav. 627.
Allwood v. *Heywood* (1863) 1 H. & C. 745.
Leathes v. *Leathes* (1877) 5 Ch. D. 221.

[If there are special circumstances, e. g. if the tenant for life is not a safe custodian, or the deeds are required to enable the Court to administer the property, the Court may deprive the tenant for life of the title deeds (*Leathes* v. *Leathes*, *ubi sup.*).]

(c) *Re Kemeys-Tynte* [1892] 2 Ch. 211.
(d) *Viner* v. *Vaughan* (1840) 2 Beav., at p. 469, *per* Lord Langdale, M. R.
Honywood v. *Honywood* (1874) L. R. 18 Eq., at p. 311.
Brigstock v. *Brigstock* (1878) 8 Ch. D. 357.

Estovers

1074. A tenant for life is entitled, notwithstanding the provisions of the law against waste, to cut and take reasonably from the land sufficient timber for repair and fuel of his house standing thereon ("housebote"), for making and repairing instruments of husbandry to be used thereon ("ploughbote"), and for repairing (ancient) hedges (i. e. fences) thereon ("haybote"); unless he is restrained

from so doing by special provision in the instrument creating his estate.

Co. Litt. 41 b.

[The incumbent of a living has similar rights (*Strachy* v. *Francis* (1741) 2 Atk. 217).]

Emblements

1075. A tenant for life whose estate determines (otherwise than by his own act or default) between seed time and harvest, is entitled, notwithstanding such determination, to free ingress and regress into and from the land, for the purpose of reaping annual crops sown by him in the land ("emblements"). If the tenant for life be dead, his representatives may exercise such right.

Co. Litt. 55 b.

[Can the Landlord and Tenant Act, 1851, s. 1, (*post*, § 1141) ever apply to a claim of a tenant for life to emblements? As a rule, the claim of emblements is confined strictly to *annual* crops (*Graves* v. *Weld* (1833) 5 B. & Ad. 105). But it is extended to hops, on account of the great labour involved in the cultivation of them (*Latham* v. *Atwood* (1635) Cro. Car. 515).]

Waste by tenant for life

1076. A tenant for life, not expressly made unimpeachable for waste, is liable to an action for damages or an account, and, if necessary, an injunction, if he commits any act of positive ("voluntary") waste (*post*, Sect. II, Tit. III) on the land.[a] Even if he is not impeachable for waste, he will be similarly liable if he is guilty of equitable waste (*post*,

Sect. II, Tit. III), unless the instrument creating his estate expressly or by implication authorizes him to commit equitable waste.[b] A tenant for life is not, in the absence of special provision, liable for permissive waste (*post*, Sect. II, Tit. III).[c]

(a) Co. Litt. 53 a.
Woodhouse v. *Walker* (1880) 5 Q. B. D. 404.
(b) *Vane* v. *Lord Barnard* (1716) 2 Vern. 738.
Judicature Act, 1873, s. 25 (3).
(c) *Re Cartwright* (1889) 41 Ch. D. 532.

Action for waste

1077. The person having the (next) vested estate of inheritance in the land at the time when the waste was committed, and at the time when the action is brought, may bring the action

Woodhouse v. *Walker*, *ubi sup.*

[The old Action of Waste was very technical on this point; but it was practically superseded, long before its formal abolition in 1833 (Real Property Limitation Act, 1833, s. 36) by the Action of Case. The owner of the next vested estate of inheritance may also bring an Action of Trover to recover articles severed from the land, or an action for money had and received from the sale thereof (*Seagram* v. *Knight* (1867) L. R. 2 Ch. App., at p. 632). There appears to be some authority for saying that the owner of a vested estate for life or years in remainder or a reversioner for life or years, may also bring an action for damages (*Greene* v. *Cole* (1670) 2 Wms. Sand. 252 n.). For the case of collusion between a tenant for life and a remainderman in fee, see *Birch-Wolfe* v. *Birch* (1870) L. R. 9 Eq. 683.]

Ameliorating waste

1078. No equitable remedy will be given against a tenant for life in an action of waste, if the Court

is of opinion that the acts of the tenant for life have really improved the value of the inheritance ("ameliorating waste").

Mollineux v. *Powell* (1730) in note to
Bewick v. *Whitfield* (1734) 3 P. Wms. 268.
Doherty v. *Allman* (1878) L. R. 3 App. Ca. 709.
Meux v. *Cobley* (1892) 2 Ch. 253.

[The last two cases were terms of years; but the argument would be stronger for life tenants. In *Edmund* v. *Martell* (1908) XXIV T. L. R. 25, the Court even refused to give the plaintiff judgment for nominal damages in such a case. But the point was not seriously argued.]

Forfeiture of estate for life

1079. Provisions for the cesser or forfeiture of an estate for life upon alienation, voluntary or involuntary, are valid;[a] provided that they are not aimed at securing objects deemed to be contrary to the policy of the law.[b] A settlement by a person of his own property upon himself for life, with a provision for cesser or forfeiture on his own bankruptcy, is binding upon the tenant for life, but not upon his trustee in bankruptcy.[c]

(a) *Re Bedson's Trusts* (1884) 25 Ch. D. 458 (personalty).
Blackman v. *Fysh* [1892] 3 Ch. 209.
Re Cotgrave [1903] 2 Ch. 705 (personalty).
(b) For list of such objects, see *ante*, Bk. I, § 96; and add, (n) preventing the tenant entering the military service of the Crown (*Re Beard* [1908] 1 Ch. 383).
(c) *Re Johnson Johnson* [1904] 1 K. B. 134.

Alienation by tenant for life

1080. Subject to § 1079, the owner of an estate for life (including an estate *pur autre vie*) may alien-

ate it,[a] and, in so doing, may create a quasi fee simple (§ 1081) or a quasi entail (§ 1083). He may also create out of it any estate for years,[b] or, if the subject matter of the estate is a manor, may grant, by the customary methods, any ancient customary tenement to be held at the ancient rents and services, for any estate justified by the custom of the manor.[c]

(a) Co. Litt. 42 a.
(b) Of course such estate, unless made under an overriding power (e. g. under the Settled Land Acts), will come to an end with the expiry of the lessor's estate. But a lease for years by a freeholder never occasioned a forfeiture; because it did not convey the seisin.
(c) Co. Litt. 58 b; Co. *Cop.* 34, pp. 80, 81.

Quasi fee simple

1081. A quasi fee simple is created by a limitation of land in a deed to a person and his heirs, to hold during the life of another, or by a limitation to a person and his heirs by an assuror whose interest in the land is a life estate only.

Co. Litt. 41 b.

[A conveyance of an estate for lives to a man "his executors and administrators," has been held to give the executor a right as special occupant (*Northen* v. *Carnegie* (1859) 4 Drew. 587). *Quære:* since the Land Transfer Act, 1897. A limitation of a term of years, or of pure personalty, to a person and his heirs, will confer upon such person all the interest of the donor in such property absolutely (*Saltern* v. *Saltern* (1742) 2 Atk. 376; *Re Johnston* (1884) 26 Ch. D. 538).]

Alienation of quasi fee simple

1082. A quasi fee simple may be disposed of by the owner thereof *inter vivos* or by testament in the

same manner as an ordinary estate for life; [a] but, if it is undisposed of by him at his death, it will go to his heir as special occupant.[b] In all other respects, the qualities of a quasi fee simple are those of an ordinary estate for life.[c]

(a) Co. Litt. 41 b
Edward Seymor's Case (1612) 10 Rep. 98 a } (*inter vivos*).
Wills Act, 1837, s. 3 (by testament).

[He cannot destroy an executory interest limited to take effect in defeasance of the quasi fee (*Re Barber* (1881) 18 Ch. D. 624).]

(b) Wills Act, 1837, s. 6.
Land Transfer Act, 1897, s. 1.

[Even if the limitation is to A "his heirs executors (and administrators)," A's heir and not his personal representative, will (subject to the Land Transfer Act, 1897, s. 1) be entitled as special occupant on A's death intestate (*Atkinson* v. *Baker* (1791) 4 T. R. 229). But (*semble*) where a quasi fee simple is devised without express words of limitation, the devisee's heir cannot claim as special occupant (*Re Inman* [1903] 1 Ch. 241).]

(c) Co. Litt. 41 b.

Quasi entail

1083. A quasi entail is created by a limitation of land in a deed to a person and the heirs of his body, to hold during the life of another, or by a similar limitation to a person and the heirs of his body by a donor whose interest in the land is a life estate only.[a] Any devise for the life of a person other than the devisee, and any devise made by a person having an estate *pur autre vie*, from which an intention to create an estate tail can be gathered, will have a similar effect.[b] A similar limitation of

an estate for years or pure personalty will convey the whole of the donor's interest to the donee absolutely.[c]

(a) *Blake* v. *Luxton* (1795) 6 T. R. 289.
Campbell v. *Sandys* (1803) 1 Sch. & Lef. 281.
Slade v. *Pattison* (1834) 5 L. J. Ch. 51.
Conveyancing Act, 1881, s. 51.
(b) *Wastneys* v. *Chappell* (1714) 3 Bro. P. C. 50.
Murthwaite v. *Jenkinson* (1824) 2 B. & C. 357.
(c) *Webb* v. *Webb* (1710) 1 P. Wms. 132.
Low v. *Burron* (1734) 3 P. Wms. 262.
Hodgeson v. *Bussey* (1740) 2 Atk. 89.
Read v. *Snell* (1743) *ibid.* 642.
Murthwaite v. *Jenkinson* (1824) 2 B. & C. 357.
Doncaster v. *Doncaster* (1856) 3 K. & J. 26.

[It appears from a note in 3 B. & C. 191, that the Lord Chancellor (Lord Eldon), by whom *Murthwaite* v. *Jenkinson* had been referred to the King's Bench, took the view that the gift of the personalty in that case was for life only. That was also the view taken in the two previous cases, on the wording of the limitations; but the principle stated in the text was fully admitted.]

Barring of quasi entail

1084. A person entitled to a quasi entail in possession may convey, not only his own interest, but also the interests of the issue in quasi tail and the remaindermen expectant on the failure of such issue, by ordinary conveyance *inter vivos*.[a] A tenant in quasi tail in remainder can only, without the concurrence of the quasi tenant for life in possession, convey his own interest and that of his issue.[b] No tenant in quasi tail can devise his interest.[c]

(a) *Norton* v. *Freeker* (1737) 1 Atk. 523
Blake v. *Luxton* (1795) 6 T. R. 289
(overruling *Low* v. *Burron* (1734) 3 P. Wms. 262, on that point).

[*Quære:* can such a person destroy an executory interest limited in defeasance of his estate? The tenant of a quasi fee cannot (*Re Barber* (1881) 18 Ch. D. 624).]

(b) *Wastneys* v. *Chappell* (1714) 3 Bro. P. C. 50.
Slade v. *Pattison* (1834) 5 L. J. Ch. 51.
Re Barber, ubi sup.

(c) *Campbell* v. *Sandys* (1803) 1 Sch. & Lef., at p. 295, *per* Lord Redesdale.
Cresswell v. *Hawkins* (1857) 3 Jur. N. S., at p. 408.

Rights of tenant of quasi entail

1085. A tenant in quasi tail has, with regard to the user of the land, only the powers conferred upon the original tenant by the instrument creating the estate for lives; or, if there is no such instrument, or so far as such instrument does not extend, only the powers of a tenant for life (*ante*, §§ 1073–1078).

[It is difficult to find any express authority for this statement; but it is equally difficult to suppose that a tenant for life could confer more powers than he himself has, by the simple process of alienating his estate.]

Determinable life estate

1086. When an estate is limited by deed to a person (without words of inheritance) until the happening of an uncertain event, or whilst a certain state of things shall continue, such an estate will be a determinable life estate.[a] A similar limitation in a testament will (*semble*) confer a fee simple determinable (*ante*, § 1052); unless the nature of the limitation is such as to show an intention on the part of the testator, that the estate shall not last beyond the lifetime

of the devisee or some other person living at the time when the testament takes effect. In the latter event, the devisee will (probably) be deemed to take a determinable life estate.[b]

(a) Co. Litt. 42 a. (A common example of such an estate is created by a limitation to a woman *durante viduitate*.)
(b) Wills Act, 1837, s. 28.

Absence of cestui que vie

1087. If, in an action by a lessor or reversioner claiming land on the alleged expiry of an estate *pur autre vie*, it is proved by the plaintiff that any *cestui que vie* has been absent from the realm by the space of seven years together, such *cestui que vie* is, in the absence of proof of his life, presumed to be dead.

18 & 19 Car. II (1666) c. 11, s. 1.

Production of cestui que vie

1088. Any person entitled to any estate in expectancy after the death of any other person may, on proof of such fact, and that he has reasonable grounds to believe that such other person's death is being concealed, obtain from time to time an order of the High Court compelling production of such other person by the person alleged to be concealing his death. In default of such production, such claimant will be entitled to enter upon the land in question;

unless the person ordered to produce the *cestui que vie* can satisfy the Court that he has failed, from no fault of his own, to make such production, and that the *cestui que vie* is in fact alive.

Cestui Que Vie Act, 1707, ss. 1–4.
In re Owen (1878) 10 Ch. D. 166.

TITLE V — COPYHOLDS AND CUSTOMARY FREEHOLDS

Copyhold estate

1089. A copyhold estate is an estate granted by the lord of a manor to be held at the will of the lord according to the custom of such manor.

Co. Litt. 57 b.

[The term "copyhold" is derived from the fact that all changes in the tenancy of copyhold estates are entered on the manorial rolls, and that copies of such entries are treated as evidences of title (*Cawthorn* v. *Mee* (1833) 4 B. & Ad. 617). There is much dispute as to the legal definition of a manor; but, substantially, it may be said to be a feudal unit consisting both of demesne and tenemental lands, and including the right to hold a court for the lord's tenants. There is a tradition that no true manor can exist without at least two freehold tenants to constitute the Court Baron (*Bradshaw* v. *Lawson* (1791) 4 T. R. 443); but it is quite certain that, so far as copyhold tenants are concerned, as well as for other purposes, the unit may continue to exist as a "reputed manor," notwithstanding the absence of freehold tenants (*Soane* v. *Ireland* (1808) 10 East, 259; *Clayton* v. *Williams* (1843) 11 M. & W., at p. 807, *per* Abinger, C. B.). The question of the existence of a manor is a question of fact for the jury (*Standen* v. *Chrismas* (1847) 10 Q. B. 135; *Delacherois* v. *Delacherois* (1864) 11 H. L. C., at p. 99). Difficulties have sometimes been caused by the existence in a manor of tenants described as holding "according to the custom of the manor," but not "at the will of the lord." But it is now definitely decided (*B. of Winchester* v. *Knight* (1717) 1 P. Wms. 406; *D. of Portland* v. *Hill* (1866) L. R. 2 Eq. 765) that such tenants, if they hold by copy of court roll, are only privileged copyholders, and not freeholders, i. e. the freehold is in the lord. See, however, the expressions of Willes, J., in *Lingwood* v. *Gyde* (1866) L. R. 2 C. P. 72, decided in the same year as *D. of Portland* v. *Hill*, *ubi sup.*]

Creation of copyhold estates

1090. The beneficial owner of an estate in possession in the manor as tenant for term of years ("lord farmer") or any greater interest, is the lord of the manor for the purpose of making grants of copyhold estates.[a] But the lord of a manor cannot make a grant to himself,[b] or (*semble*) to his wife,[c] of an estate to be held by copy of court roll.

(a) Co. *Cop.* s. 34.
Gay v. *Kay* (1599) Cro. Eliz. 661.
Rayer v. *Strickland* (1842) 2 Q. B. 792.
Dean of Christchurch v. *D. of Buckingham* (1864) 17 C. B. N. S. 391.

[The lord of a manor may appoint a steward for life (*Bartlett* v. *Downes* (1825) 3 B. & C. 616).]

(b) *Dean of Christchurch* v. *D. of Buckingham, ubi sup.*
Griggs v. *Gibson* (1866) 14 W. R. 819 (even though there is a trust for accumulation during the infancy of such person).

(c) *Firebrass* v. *Pennant* (1764) 2 Wils. 254. *Quære:* since the Married Women's Property Act, 1882?

[Where the acts of the lord are merely ministerial, e. g. the admittance of a new tenant on a surrender in his favour by the former tenant, it would seem that they would be valid, even though the lord's title was bad; if he was *de facto* in enjoyment of the manor (*Clarke* v. *Pennifather* (1584) 4 Rep. 23 b; *Burgess* v. *Thompson* (1836) 5 A. & E. 532). Otherwise, where the acts involve the exercise of discretion, e. g. the grant of a licence to demise (*Petty* v. *Evans* (1610) 2 Brownl. 40); unless done under statutory provisions (e. g. Copyhold Act, 1894, s. 94). A similar rule applies to a steward *de facto* (*Harris* v. *Jays* (1599) Cro. Eliz. 699). Where the lord is under personal incapacity, his powers are exercised by his guardian, committee, &c. (*Shoplane* v. *Roydler* (1605) Cro. Jac. 98; *Griggs* v. *Gibson*, *ubi sup.*).]

Extent of copyhold estate

1091. The extent of the estate which may be granted to hold by copy of court roll, the land in

respect of which it may be granted, the rights and liabilities of the tenant against and towards his lord, the methods of transfer, and the incidents of the estate, depend upon and are determined by the custom of the manor;

Clarke v. *Pennifather* (1584) 4 Rep. 23 b.
Everest v. *Glyn* (1815) 6 Taunt., at 430, *per* Gibbs, C. J.
Hardcastle v. *Dennison* (1861) 4 L. T. 707.

[Of course the copyholder, though nominally holding at the will of his lord, has long been protected against arbitrary ejectment by the latter (see *post*, § 1094, n.).]

except that: —

(i) any manorial custom which, in the opinion of the Court, is unreasonable, can be treated as null;

Co. *Cop.* s. 33.
Parker v. *Combleford* (1599) Cro. Eliz. 725.
Broadbent v. *Wilks* (1742) Wils. 360.
Fawcet v. *Lowther* (1751) 2 Ves. Sen., at p. 302, *per* Lord Hardwicke, C.
Stevens v. *Tyrell* (1753) 2 Wils. 1.
Parkin v. *Radcliffe* (1798) 1 Bos. & P. 282.
Badger v. *Ford* (1819) 3 B. & Ald. 153.
Hilton v. *E. Granville* (1844) 5 Q. B. 701.
M. of Salisbury v. *Gladstone* (1861) 9 H. L. C., at p. 701, *per* Lord Cranworth, C.

(ii) copyhold estates, notwithstanding any custom to the contrary, are devisable in the form prescribed by the Wills Act, 1837, and only in that form;

Wills Act, 1837, ss. 3, 9.

[Before the passing of the Wills Act, the devisability of copyholds depended upon custom (*Lewis* v. *Lane* (1834) 2 Myl. & K. 449); though, where a custom to devise existed, a surrender to

the use of the will had been rendered unnecessary by the 55 Geo. III (1815) c. 192. Although the estate has been devised under the Wills Act, it remains in the customary heir until the devisee is admitted (*Garland* v. *Mead* (1871) L. R. 6 Q. B. 441). But admittance of a devisee for life devests the estate of the testator's customary heir; and the remainderman thereupon becomes seised, even though he never takes possession. This was important before the passing of the Inheritance Act, 1833, and may, even now, be worth noting (*Parker* v. *Thomas* (1842) 3 Man. & G. 815).]

(iii) a copyhold tenement may, notwithstanding any custom to the contrary, be alienated by its owner in parcels, with the written licence of the lord (or of the steward authorized in writing by the lord) entered on the court rolls. If the tenement is divided, the lord may apportion the yearly customary rent;

Copyhold Act, 1894, s. 86.

(iv) in an action for partition of a copyhold tenement, the like order may be made as may be made in respect to land of freehold tenure;

Ibid. s. 87.

[Presumably, this section would authorize an order for sale under the Partition Acts 1868 and 1876, as well as an order for partition.]

(v) notwithstanding any custom to the contrary, no lord of a manor may make grants of land not previously of copyhold tenure to any person to hold in customary tenure without the consent

of the Board of Agriculture; and when land is so granted with such consent, it ceases to be of copyhold tenure, and vests in the grantee in free and common socage for the interest granted;

Copyhold Act, 1894, s. 81.

[Such a grant is, of course, only *primâ facie* possible by virtue of express custom, which often requires the consent of the homage or freeholders of the manor. In such a case such consent must be duly obtained (Copyhold Act, 1894, s. 83).]

(vi) notwithstanding any custom to the contrary, a customary court may be held, by the lord, steward, or deputy steward, although there is no copyhold tenant of the manor, or although no copyhold tenant, or only one, is present at such court. But a proclamation made at such court will not affect any one not present, unless notice of it is served on him within one month;

Ibid. s. 82.

(vii) notwithstanding any custom to the contrary, a proper grant of a copyhold or customary estate, and a valid admittance to a similar estate, may be made, by the lord, or steward, or deputy steward, out of the manor, without a court, and, in the case of admittance, without any presentment by the homage of the surrender,

instrument, or fact, in pursuance of which the admittance is made;

Copyhold Act, 1984, ss. 83, 84.

[Surrenders and wills are to be entered on the court rolls (*ibid.* s. 85).]

(viii) notwithstanding any custom to the contrary, voluntary or compulsory enfranchisement of copyholds may be effected (*post*, §§ 1106–1116).

Ibid. s. 1.

[In addition to the incidents specified in Tit. I, § 1040, *ante*, common incidents of copyhold tenure are — (i) fines on admittance and for breaches of custom, (ii) suit of court. Some statutes (*e. g.* the 12 Car. II (1660), c. 24, and the Real Property Act, 1845) expressly exclude copyholds from their operation; others (*e. g.* the Copyhold Acts themselves) as expressly include them. Where the Act is silent, it is often difficult to know whether copyholds are affected; and the principles to apply are discussed in *Heydon's Case* (1584) 3 Rep. 7 a, where it was ruled (*obiter*) that the statute *De Donis* does not apply to copyholds, though there may be, in a given manor, a special custom to entail. The Statute of Uses (27 Hen. VIII (1535) c. 10) does not apply to copyholds (*Baker* v. *White* (1875) L. R. 20 Eq., at p. 175, *per* Jessel, M. R.) nor to tenancy in 'antient demesne' (*Cresswell* v. *Hawkins* (1857) 3 Jur. N. S. 407). Before 1833, copyhold tenants in tail barred the entail by surrender in the manorial court; and the practice is now made statutory by ss. 50–54 of the Fines and Recoveries Act, 1833. The Real Estates Charges Acts apply to copyholds (*Piper* v. *Piper* (1860) 1 J. & H. 91).]

Alienation by copyholder

1092. Subject to the existence of any custom to the contrary, the owner of a copyhold estate may limit any number of smaller estates thereout in the

customary manner;[a] except that, in the absence of special custom, a copyholder who professes to demise any part of his tenement for more than one year, without the licence of the lord of the manor, incurs a forfeiture of his estate.[b]

(a) *Mildmay* v. *Hungerford*, (1691) 2 Vern. 245.
Lovell v. *Lovell* (1743) 3 Atk. 11.
Habergham v. *Vincent* (1791) 5 T. R. 92.
Mallinson v. *Siddle* (1870) 39 L. J. Ch. 426.
Allen v. *Bewsey* (1877) 7 Ch. D. 453.

[The same construction will be put upon such limitations as upon analogous limitations of freehold estates (*Fisher* v. *Wigg* (1700) 1 P. Wms., at p. 16, *per* Holt, C. J.; *Sutton* v. *Stone* (1740) 2 Atk. 101).]

(b) *Melwich* v. *Luter* (1588) 4 Rep. 26.
Jackman v. *Hoddesdon* (1594) Cro. Eliz. 351.
Lutterel v. *Weston* (1611) Cro. Jac. 308 (though here the rule was pleaded as a special custom).

[A demise made in defiance of this rule is not, however, void as between lessor and lessee (*Tresidder* v. *Tresidder* (1841) 1 Q. B. 416; *Robinson* v. *Bousfield* (1844) 6 Q. B. 492).]

Corporation as copyholder

1093. The lord of a manor cannot be compelled to admit a corporation as tenant by copy of court roll;[a] but copyholds required for public purposes may be conveyed to a corporation under an Act of Parliament with a view to their enfranchisement.[b]

(a) *A. G.* v. *Lewin* (1837) 8 Sim. 366.
Grand Junction Canal Co. v. *Dimes* (1846) 15 Sim. 402.

[The rule as stated in Bk. I, § 27, is, perhaps, too wide. But it is supported by more than one eminent real property lawyer (see Scriven, *Copyholds*, Vol. I, p. 108).]

(b) Lands Clauses Act, 1845, ss. 95–97.
D. of Northumberland v. *Tynemouth* [1909] 2 K. B. 374.

Actions between lord and copyholder

1094. No action for damages will lie by the lord of a manor against his copyhold tenant, or *vice versâ*, in respect of any alleged breach of customary duty owed by virtue of the tenancy;

Galbraith v. *Poynton* [1905] 2 K. B. 258.

except that:—

(i) an action may be brought by the lord of a manor, or his personal representative, to recover a fine payable on the alienation of a copyhold tenement,[a] or by the steward of a manor for his fees in connection with the admittance of a new copyhold tenant, or the enfranchisement of a copyhold tenement;[b]

(a) *Shuttleworth* v. *Garnet* (1687) 3 Mod. 240.
Evelyn v. *Chichester* (1765) 3 Burr. 1717.
Hayward v. *Raw* (1861) 6 H. & N. 308.
Fraser v. *Mason* (1883) 11 Q. B. D. 574.
(b) *Everest* v. *Glyn* (1815) 6 Taunt. 425.
Blaker v. *Wells* (1873) 28 L. T. 21.

[The fine is not due until after admittance (*Rex* v. *Hendon* (1788) 2 T. R. 484; *The Queen* v. *Lord Wellesley* (1853) 2 E. & B. 924). But if an heir or devisee will not take admittance, and thus fill the vacancy on the rolls, the lord may, after due proclamations, seize the tenement *quousque*, i. e. until a new tenant is admitted (*Twining* v. *Muscott* (1844) 12 M. & W. 832). In the case of infant heirs or devisees, the seizure is only until payment of the fine; the lord's claim in such a case being limited by statute (Infants' Property Act, 1830, ss. 6, 9). In the case of a lunatic, the tenant is admitted by attorney (Lunacy Act, 1890, ss. 125–6). Before action is brought for an uncertain fine, the fine must be assessed by the lord with reasonable certainty (*Fraser* v. *Mason*, *ubi sup.*); but the Statute of Limitations begins to run against the lord from the date of the tenant's admittance (*Monckton* v. *Payne* [1899] 2 Q. B. 603).]

(ii) where the conduct of a tenant gives rise to an implied promise to fulfil his obligations under a custom, an action of contract or quasi contract will lie against him or his personal representatives for non-fulfilment of such obligations.

Blackmore v. *White* [1899] 1 Q. B. 293. (This case stands absolutely alone; and is difficult to reconcile with *Galbraith* v. *Poynton, ubi sup.*)

[The origin of the principal rule is the fact that, until the end of the 15th century, copyhold tenure was not recognized by the King's Courts. It has, however, long been settled, that for any act or omission of lord or tenant which amounts to a common law tort, e. g. trespass or ejectment, an action will lie (*Otlery Monastery Case* (1583) 1 Leon. 4; *Rennington* v. *Cole* (1618) Noy, 29); and the equitable remedies of account and injunction will be granted against a copyholder guilty of waste, or a lord encroaching on the copyholder's rights (*Bishop of Winchester* v. *Knight* (1717) 1 P. Wms. 406; *Grey* v. *D. of Northumberland* (1806) 13 Ves. 236).]

Relief against forfeiture

1095. Where the act or default upon which a claim to forfeiture for breach of custom is founded was not deliberate, and the loss caused thereby to the lord can be compensated by payment of money, the Court may grant equitable relief against such forfeiture on payment of compensation by the tenant.

Nash v. *E. of Derby* (1705) 2 Vern. 537.
Cox v. *Higford* (1710) *ib.* 664.
Peachy v. *D. of Somerset* (1721) Pre. Cha. 567.

[Before the Judicature Act, the remedy would have been an injunction to prevent the lord suing in ejectment. Since the coming into operation of the Judicature Act, 1873, s. 24 (5), the remedy has been given by way of equitable defence to the action of the lord

to recover possession of the tenement. The act or omission only forfeits the estate of the person guilty of it. (*Peachy* v. *D. of Somerset*, *ubi sup.*)]

Mandamus to admit

1096. A Mandamus will be granted by the King's Bench Division to compel the lord of a manor to admit a person lawfully claiming to be admitted as tenant of a copyhold estate (or, *semble*, to do any other ministerial act).

R. v. *Hendon* (1788) 2 T. R. 484.
R. v. *Brewers' Co.* (1824) 3 B. & C. 172.
The Queen v. *Ham* (1839) 8 L. J. Q. B. (N. S.) 265.
The Queen v. *Dendy* (1852) 22 L. J. Q. B. 39.

[It was at one time thought, that a Mandamus would not be granted on the application of an heir; inasmuch as he could enter and act as tenant before admittance (*R.* v. *Rennett* (1788) 2 T. R. 197). But this doctrine has long been abandoned (*R.* v. *Brewers' Co.*, *ubi sup.*). On the return to the order *nisi*, the lord may give his reasons for alleging that the claimant is not entitled to be admitted; and the matter then proceeds as in an ordinary action to try a title (*R.* v. *Coggan* (1805) 6 East, 431; *The Queen* v. *Dendy*, *ubi sup.*, p. 247). A Mandamus may also be granted to compel the lord to produce the manorial rolls for inspection by a party entitled (*Re Hutt* (1839) 7 D. P. C. 690).]

Reservation of boundaries

1097. In the absence of custom to the contrary, it is the duty of a copyholder to preserve the boundaries of his tenement; so as to avoid confusion with other tenements.

D. of Leeds v. *E. of Stratford* (1798) 4 Ves. 180.
Searle v. *Cooke* (1890) 43 Ch. D. 519.

Waste by copyholder

1098. In the absence of custom to the contrary, no copyhold tenant, even though he holds a customary fee, may commit any act of voluntary waste (*post*, Sect. II, Tit. III) on his tenement;[a] and (*semble*) every copyhold tenant is, in the absence of custom to the contrary, liable even for permissive waste (*post*, Sect. II, Tit. III).[b] But the lord may not, in the absence of custom, enter upon the tenement to cut timber, or enter on the surface to dig for minerals, without the consent of the copyholder.[c]

(a) *Keyse* v. *Powell* (1853) 2 E. & B. 132.
Duke of Portland v. *Hill* (1866) L. R. 2 Eq. 765.
Hext v. *Gill* (1872) L. R. 7 Ch. App., at p. 713, *per* Mellish, L. J.
Eardley v. *E. Granville* (1876) 3 Ch. D., at p. 832, *per* Jessel, M. R.
A. G. v. *Tomline* (1877) 5 Ch. D. 750; 15 Ch. D. 150.
Sitwell v. *Worrall* (1898) 79 L. T. 86.

[In *Fawcet* v. *Lowther* (1751) 2 Ves. Sen., at p. 303, Lord Hardwicke expressed the opinion that even a custom for a copyholder for life to commit waste would be bad.]

(b) Co. Litt. 53 b.
Co. *Cop.* s. 57.
Cox v. *Higford* (1710) 2 Vern. 664.
Regina v. *Dare* (1861) 2 F. & F. 355.

(c) *Bourne* v. *Taylor* (1808) 10 East, 189.
Hilton v. *E. Granville* (1845) 5 Q. B. 701.

[In *Bowser* v. *Maclean* (1860) 2 De G. F. & J. 415, it seems to have been assumed, that the lord might tunnel through the copyhold tenement to work coal in other parts of the manor; and *a fortiori*, he would be entitled to work the minerals in the tenement without disturbing the surface. But a stranger who works minerals, even without disturbing the surface, is guilty of trespass against the copyholder (*Lewis* v. *Branthwaite* (1831) 2 B. & Ad. 437). So too the lord is guilty of trespass, if he uses the space below the surface for the purpose of working minerals outside the manor (*Lewis* v. *Branthwaite*, *ubi sup.*).]

Reduced fine

1099. Where there is a custom to the effect that a tenant of the manor may be admitted, on the acquisition of a new tenement, on payment of a fine smaller than that payable by a stranger on a similar occasion, a person who has acquired a smaller tenement within the manor for the express purpose of qualifying himself to claim admittance as a tenant of the manor in respect of a more valuable tenement, will not on that ground be disqualified from claiming to be admitted on payment of the smaller fine.[a] But if in fact the acquisition of the smaller tenement was not *bonâ fide*, or was with secret trust or reservation for or by the person alienating it, the person acquiring it will not be entitled to avail himself of the custom.[b]

(a) *R.* v. *Boughey* (1823) 1 B. & C. 565.
(b) *A. G.* v. *Sandover* (1904) 1 K. B. 689.

Arbitrary fine

1100. Where the amount of a fine on admittance is uncertain ("arbitrary"), the amount assessed by the lord must not exceed what the Court deems to be reasonable in the circumstances.

Morgan v. *Scudamore* (1677) 2 Ch. Rep. 70.
R. v. *Dillington* (1689) Freem. K. B. 494.
Douglas v. *E. Dysart* (1861) 10 C. B. N. S. 688.
A. G. v. *Sandover, ubi sup.*

[The existence of a custom such as that described in § 1099 will justify the lord in assessing on the tenement first acquired a much higher fine than two years' improved value, which is the normal amount (*Holder & Sulyard* v. *Preston* (1769) 2 Wils., at p. 401) of an 'arbitrary fine' (*R.* v. *Dillington*, *ubi sup.*).]

Fines in settled manors

1101. Where the lordship of a manor is the subject of a settlement, all fines received by the tenant for life or the trustees of the settlement, whether in respect of ordinary admittances or of new grants out of the waste, and all usual profits of the waste, belong, in the absence of express directions in the settlement, to the tenant for life for the time being.[a] But where a lump sum is paid by way of compensation by an authority having power to acquire land within the manor compulsorily for public purposes, no part of such sum can be claimed by the tenant for life as representing fines.[b]

(a) *Earl Cowley* v. *Wellesley* (1866) 35 Beav. 635.
Re Medows (1898) 1 Ch. 300.
(b) *Re Wilson's Estate* (1863) 3 De G. J. & S. 410.

Fines of limited owners

1102. Where a tenant for life has paid fines for the renewal of copyholds held for terms of lives,[a] or on the admission of new trustees,[b] he is entitled to a charge on the *corpus* of the settled property for such proportion of the fines as represents the interest of the remaindermen in such property.

(a) *Bradford* v. *Brownjohn* (1868) L. R. 3 Ch. App. 711.
(b) *Carter* v. *Sebright* (1859) 26 Beav. 374.
Re Bullock's Settled Estates (1905) 91 L. T. 651.

[For the somewhat complicated system on which the proportions are calculated, see *Nightingale* v. *Lawson* (1785) 1 Bro. C. C. 440, expressly followed by the Court in *Bradford* v. *Brownjohn*.]

Grants for lives

1103. Whether a copyhold estate granted to a tenant for his own life and that of others successively is a grant for the benefit of the first taker only, or for the other *cestuis que vie* beneficially after his death, is a question of fact in each case.[a] In the former event, the estate will pass, on the death of the first taker, to his personal representatives, during the lifetimes of the remaining *cestuis que vie*.[b]

(a) *Rundle* v. *Rundle* (1691) 2 Vern. 252, 264.
Smith v. *Baker* (1737) 1 Atk. 385.
(b) *Clark* v. *Danvers* (1679) 1 Ca. Ch. 310.
Howe v. *Howe* (1686) 1 Vern. 415.
Wills Act, 1837, s. 6.

[The decision is influenced by (1) the existence of a custom entitling the first taker to dispose of the estate absolutely during his life (2) the question of who paid the fine on admittance (3) the existence of valuable consideration by the *cestuis que vie*. If the grant was to the first taker and his heirs, the heir of the first taker succeeds as special occupant (*Lemprière* v. *Martin* (1777) 2 W. Bl. 1148).]

Admittance of limited owners

1104. In the absence of express custom,[a] the admittance of a tenant for life is the admittance of the remaindermen under the same settlement;[b] and where a full fine has been paid on the admittance of a tenant for life, the lord of a manor cannot, in the absence of custom to the contrary, claim a full fine on the admittance of a remainderman under the same settlement.[c]

(a) *Whitbread* v. *Jenney* (1804) 5 East, 522.
Richardson v. *Kensit* (1845) 5 M. & G. 485.
(b) *Tiping* v. *Bunning* (1597) Moore, 465.
Auncelme v. *Auncelme* (1603) Cro. Jac. 31.

(c) *D. & C. of Ely* v. *Caldecot* (1832) 8 Bing. 439.
Phypers v. *Eburn* (1836) 3 Bing. N. C. 250.
Reg. v. *Woodham Walter* (1869) 100 B. & S. 439.

[The rule has no application where the second taker does not claim under the same settlement as the first (*Reg.* v. *Dullingham* (1838) 8 A. & E. 858).]

Alienation by customary tenant for life

1105. A copyholder having an estate for life or lives may, in the absence of custom to the contrary, create out of it a customary quasi fee simple, or, if the custom permits, create a quasi entail, in the same manner as the tenant of a freehold estate for life or lives (*ante*, §§ 1081–1085).

Lemprière v. *Martin* (1777) 2 W. Bl. 1148.
Allen v. *Bewsey* (1877) 7 Ch. D. 453.

[In the last case, the derivative interests were in fact equitable; but the Court of Appeal assumed that they might have been legal. Even before the passing of the Wills Act, 1837, s. 6, there could be no general occupant of a copyhold estate; and the lord might enter after the death of the tenant (*Zouch* v. *Forse* (1806) 7 East, 86).]

Voluntary enfranchisement

1106. Every person for the time being filling the character of, or acting as, lord of a manor, whether lawfully entitled or not,[a] may, with the consent of the Board of Agriculture, agree to carry out a voluntary conversion into freehold ("enfranchisement") of the tenant's land;[b] but where the estate of the lord or the tenant is a limited interest, then, unless the tenant pays the whole cost of the enfranchisement, notice in writing of the proposed enfran-

chisement must be given to the person entitled to the next estate of inheritance in the manor or tenement respectively.[c]

(a) Copyhold Act, 1894, s. 94.
(b) *Ibid.* s. 14 (1) (2).
(c) *Ibid.* s. 14 (3).

[There are special provisions as to voluntary enfranchisement in the case of Crown manors (*ibid.* s. 69).]

Consideration for voluntary enfranchisement.

1107. The consideration for a voluntary enfranchisement under the Copyhold Act, 1894, may be either:—

(i) a gross sum, payable at once or at an agreed date; *or*,

(ii) a rent charge on and issuing out of the land enfranchised; *or*,

(iii) a conveyance of land, or of a right to mines, or minerals, whether subject to the same or corresponding uses and trusts as the land enfranchised, or not; *or*,

(iv) a conveyance of a right in the waste of the manor; *or*,

(v) partly one and partly another or others of the above forms.

Ibid. s. 15.

[Special precautions are taken when the lord is not owner in fee simple (*ibid.* s. 15 (3)). The enfranchisement money is a first charge on the enfranchised land; and the lord is deemed to be a mortgagee in fee in respect thereof, and may distrain for interest as if it were rent in arrear (s. 19).]

Compulsory enfranchisement

1108. An admitted tenant of copyhold land (other than a mortgagee not in possession) may compel the lord by notice in writing [a] to enfranchise his tenement; and a person for the time being filling the character of, or acting as, lord, whether lawfully entitled or not,[b] may, by similar notice,[a] compel such a tenant to accept enfranchisement.[c]

(a) Copyhold Act, 1894, s. 4.
(b) *Ibid.* s. 94.
(c) *Ibid.* s. 1.

[All fines and fees in arrear must be paid before a tenant can claim enfranchisement (*ibid.* s. 3). It is the duty of the steward on the admittance or enrolment of any tenant, to give him notice in statutory form of his right to obtain enfranchisement. If the steward fails to give such notice, he loses his right to any fee for such admittance or enrolment (*ibid.* s. 42).]

Consideration for compulsory enfranchisement

1109. If the enfranchisement is at the instance of the lord, or if the compensation for the enfranchisement amounts to more than one year's improved value of the land, and the land can, in the opinion of the Board of Agriculture, be sufficiently identified, such compensation takes the form, unless otherwise agreed, or unless the tenant insists on paying a gross sum, of a (perpetual) annual rent charge, equivalent to interest at the rate of four per cent on the amount of the compensation on the land enfranchised.[a] In other cases, the compensation is a gross sum paid

before enfranchisement.[b] The tenant also pays the steward's compensation.[c]

(a) Copyhold Act, 1894, 8 (1).
(b) *Ibid.* s. 8 (2).
(c) *Ibid.* s. 9.

[The method of assessing compensation is regulated by s. 7. The award of enfranchisement is made by the Board of Agriculture (s. 10). A rent charge created by way of compensation for enfranchisement may be redeemed in manner provided by the Act (s. 30).]

Alternative of enfranchisement

1110. Where, in the opinion of the Board of Agriculture, the enjoyment or value of the lord's mansion house, park, gardens, or pleasure grounds, might be prejudicially affected by an enfranchisement demanded by a tenant, the lord may elect, in lieu of enfranchising the tenement, to purchase the interest of the tenant at a valuation (including expenses of purchase) made by the Board of Agriculture.

Ibid. s. 11.

Suspension of enfranchisement

1111. The Board of Agriculture may suspend any proceedings for compulsory enfranchisement under the Copyhold Act, 1894, where in its opinion there would be difficulty, owing to peculiar circumstances, in deciding on the prospective value of the land, or where any special hardship or injustice would unavoidably result from compulsory enfranchisement.

But any such suspension must be reported by the Board to Parliament.

Copyhold Act, 1894, s. 12.

Rights not affected by statutory enfranchisement

1112. No enfranchisement made under the Copyhold Act, 1894, affects —

(i) the lord's right of escheat in respect of the enfranchised tenement;

(ii) the application of the custom of gavelkind in Kent;

(iii) the dower, freebench, or curtesy, of any person married before the date at which the enfranchisement takes effect;

(iv) any right of common belonging to the tenant;

(v) any right to or in respect of mines or minerals, or any easement in connection therewith, of the lord or tenant, or any rights or privileges of the lord in respect of fairs, markets, or sport; except so far as expressly consented to in writing by the party affected.

Ibid. ss. 21–23.

[On any enfranchisement under the Act, a right of way or other easement for the purpose of working mines or minerals under the enfranchised tenement may, with the consent of the tenant, be reserved or granted to the lord (s. 24).]

1113. Subject to § 1112, an enfranchisement under the Copyhold Act, 1894, whether voluntary or compulsory, converts the enfranchised tenement into free and common socage, exempt from any local custom of descent, dower, freebench, curtesy, or any other kind whatever, and free from any estate, right, charge, or interest affecting the manor; but subject to all the rights and interests of any person having, at the date of the enfranchisement, any right or interest under any testament, settlement, mortgage, lease, or other disposition, in the enfranchised tenement. *Effect of enfranchisement*

Copyhold Act, 1894, s. 21.

[Where the tenement is, at the date of the enfranchisement, subject to a lease, the freehold becomes the reversion on the lease, as if the term had originally been created out of it (*ibid.* (3)). Where the tenant was admitted subject to any condition affecting the user of the land, imposed for the benefit of the public or the other tenants of the manor, and the enfranchisement is compulsory, the Board of Agriculture may, if in its opinion some special hardship or injustice would result if the land were released from the condition, continue and give effect to the condition by the award of enfranchisement (*ibid.* s. 13).]

1114. Where in a manor the fines are certain, and it is the practice for copyholders in fee to grant derivative interests to persons who are admitted as copyholders of the manor in respect of those interests, the Board of Agriculture may, at the request of *General enfranchisement*

the lord, or of one fourth of the copyholders for the time being on the court roll of the manor, hold a local enquiry; and if at such enquiry it appears that not less than two thirds of the copyholders desire enfranchisement of all the copyhold tenements of the manor, the Board must make an order accordingly, and proceed to ascertain the compensation payable to the lord in respect thereof. Such compensation must consist of a gross sum of money in respect of each tenement, unless the lord and the tenant in fee of such tenement otherwise agree; and must be apportioned in each case by the Board between the tenant in fee and the owners of the derivative interests in each tenement.

Copyhold Act, 1894, s. 79.

[The expenses of the enquiry and enfranchisement are similarly apportioned (*ibid.* s. 79 (c)).]

Enfranchisement at common law

1115. A person having an estate in fee simple in a manor, or a power to dispose of such an estate, or to enfranchise,[a] may, by agreement with a copyholder, enfranchise such copyholder's tenement, either by conveyance of his estate, or (*semble*) by release of his seignorial rights, independently of the Copyhold Act, 1894.[b] But such enfranchisement will deprive the tenant at law of all rights over the manorial lands, including commonable rights, which existed

by virtue of his copyhold tenure,[c] and will deprive the lord of all rights over the enfranchised tenement.[d]

(a) e. g. under the Settled Land Act, 1882, s. 3 (ii).
(b) *Bradshaw* v. *Lawson* (1791) 4 T. R. 443.
Wilson v. *Allen* (1820) 1 J. & W. 611. (In this case Sir Thos. Plumer appears to have thought that the fact that the copyholder had not actually been admitted was immaterial, if the beneficial interest was vested in him.) But the enfranchisement enures for the benefit of the persons really entitled to the tenement (*Wynne* v. *Cockes* (1780) 1 Bro. C. C. 515).
Scriven, *Copyholds*, I, p. 552.
(c) *Fort* v. *Ward* (1598) Moore, 667.
Crowder v. *Oldfield* (1706) 1 Salk. 170.

[But where the circumstances imply a grant of commonable rights, Equity will secure them to the enfranchised tenant (*Styant* v. *Staker* (1691) 2 Vern. 250). And the doctrine of the text has no application to a claim of commonable rights in land outside the manor; because these cannot exist by reason of the custom (*Crowder* v. *Oldfield*, *ubi sup.*).]

(d) *Tilbury* v. *Silva* (1890) 45 Ch. D. 98. (The Copyhold Act, 1887, (s. 4) reserved the lord's right of escheat on enfranchisement in all cases; but this Act is now repealed by the Act of 1894, which, apparently, (s. 21 (b)) only reserves the right of escheat when the enfranchisement is made under the Act.)

Enfranchisement of limited owners

1116. An enfranchisement, even though not made under the Copyhold Act, 1894, to a tenant in tail, confers upon such tenant in tail a fee simple,[a] free from all restrictions affecting the copyhold tenement, imposed for the benefit of the lord, and not reserved by the enfranchisement,[b] and from all liabilities arising from manorial custom.[c] It is

doubtful whether an enfranchisement to a tenant for life confers upon him a fee simple.[d]

(a) *Dunn* v. *Green* (1724) 3 P. Wms. 9.
Challoner v. *Murhall* (1795) 2 Ves. Jun. 524.
Ex parte School Board for London (1889) 41 Ch. D. 547.
(b) *Brabant* v. *Wilson* (1865) L. R. 2 Q. B. 44. (This rule is now, of course, subject to s. 13 of the Copyhold Act, 1894 (*ante*, § 1113 n).) *Quære*, as to non-statutory enfranchisements.
(c) *Searle* v. *Cooke* (1889) 43 Ch. D. 519.
(d) *Ex parte School Board for London*, *ubi sup.*, at p. 550, *per* North, J.

Customary freehold

1117. An estate of customary freehold is an estate which is held of the lord of a manor according to the custom of such manor, but not at the will of the lord, nor by copy of court roll.

Bingham v. *Woodgate* (1829) 1 Russ. & M. 32.
Warwick v. *Queen's College, Oxford* (1871) L. R. 6 Ch. App. 716.
Heath v. *Deane* [1905] 2 Ch. 86.
Copestake v. *Hoper* [1908] 2 Ch. 10.

[The report of *D. of Portland* v. *Hill* (1866) L. R. 2 Eq., at p. 776, shows (what indeed can hardly be doubted) that the law still recognises a peculiar form of manorial tenure known as "customary freehold," intermediate between copyhold and ordinary socage tenure. The position of true customary freeholders, i. e. customary tenants in whom the freehold is vested, is very doubtful (see *Bingham* v. *Woodgate*, *ubi sup.*, *Bushet* v. *Thompson* (1846) 4 C. B. 48). Either lord or tenant claiming to exercise any exceptional right in respect of the tenement, would be compelled to prove it by reference to the custom. It should be remembered, that all freehold tenants of a manor are entitled as of common right, in respect of their ancient arable land, to common of pasture over the waste of the manor (Co. Litt. 122 a; *Heath* v. *Deane*, *ubi sup.*, at p. 91, *per* Joyce, J.). But the tendency of the Courts is to class every tenure as copyhold in which the estates require perfection by admittance at the hands of the lord, and to hold that in such cases the freehold is in the lord (see *Burrell* v. *Dodd*

(1803) 3 Bos. & P. 378; *Reay* v. *Huntington* (1803) 4 East, 271; *Cook* v. *Danvers* (1806) 7 East, 299; *Thompson* v. *Hardinge* (1845) 1 C. B. 940); and this rule is said by Fitzherbert (*Natura Brevium*, 14) to apply even to tenants in 'antient demesne,' i. e. tenants of a manor which was in the hands of the Crown in the days of Edward the Confessor. The practical consequence is, that the tenants of such estates are in substantially the same position as ordinary copyholders with regard to the commission of waste and other manorial incidents (*D. of Portland* v. *Hill*, *ubi sup.*); though at one time they may have enjoyed greater security of tenure than ordinary copyholders. Tenants in antient demesne, however, are, according to modern views, to be ranked among freeholders (*Merttens* v. *Hill* [1901] 1 Ch. 842).]

Extinguishment of manorial rights

1118. The lord or the tenant of any land subject to any manorial right or incident may compel the extinguishment of such right or incident and the release or enfranchisement of the land subject thereto, in like manner as nearly as possible as the lord or tenant of a copyhold tenement may compel enfranchisement (*ante*, § 1108).

Copyhold Act, 1894, ss 2, 94.

[Presumably, a lord entitled in fee simple may also release or extinguish such rights or incidents by deed independently of the Copyhold Act. But such a release will not destroy the tenant's rights of common (*Baring* v. *Abingdon* [1892] 2 Ch. 374).]

TITLE VI — ESTATES FOR YEARS

Estate for years

1119. A term of years is created by a limitation ("lease") of land, by a person having an interest therein, to hold for any certain period.[a] In the case of a limitation which operates at common law, the term becomes an estate only when the lessee enters or remains upon the land in pursuance of the lease.[b] Where the limitation operates under the Statute of Uses (27 Hen. VIII (1535) c. 10), it *ipso facto* creates an estate by virtue of the statute.[c]

(a) Litt. s. 58.
Say v. *Smith* (1561) Plowd. 269.
Bishop of Bath's Case (1605) 6 Rep. 34 a.
Sheppard, *Touchstone*, p. 267.

[Interests in the nature of leases in perpetuity have sometimes been authorized by statute (*Robertson* v. *Gardiner* (1852) 12 C. B. 319; *Sevenoaks Ry. Co.* v. *L. C. & D. Ry. Co.* (1879) 11 Ch. D. 625). The Settled Land Act, 1882, s. 10 (1), seems also to contemplate such interests as existing under local custom.]

(b) Co. Litt. 46 b.
(c) *Iseham* v. *Morrice* (1628) Cro. Car. 109.
Barker v. *Keat* (1677) 2 Mod. 249.

[The classification of terms of years is not very clear; and, in dealing with it, it is difficult to avoid a cross division. The distinction adopted in the text is one of form; but it appears to be the safest for legal purposes. Although the interest of the lessee for years was not completely protected until the passing of the statute of 1529 (21 Hen. VIII, c. 15), it is clear that by Littleton's day it was regarded as an estate, subject at least to some of the incidents of tenure. (Litt. s. 132.) But the influence of its originally contractual character (§ 1037, note) has always prevented it being classed, technically, as real property, and, therefore, as capable of

seisin. Consequently, it was not a suitable subject for the normal common law conveyance, viz. feoffment with livery of seisin; and, until the passing of the Statute of Frauds in 1677, no formalities were required for the creation of a term of years. Still, as we have seen above, the common law Courts had, by Littleton's day, laid it down that, while the making of the lease created an *interesse termini*, which was transferable, and passed to the executors of the lessee on the latter's death, no estate arose until entry, which, however, unlike entry after livery in law, did not necessarily take place in the lifetime of the lessor or lessee (see *post*, § 1120). It was said, indeed, by the Court in *Iseham* v. *Morrice* (*ubi sup.*), that the lessor might "waive the possession"; but this *dictum* seems to have been without due consideration, and the necessity for entry by the lessee remains a rule of the common law. The passing of the Statute of Uses, however, paved the way for the creation of estates for years without entry; the most important instance of which was the lease on which the conveyance by Lease and Release was founded. But, inasmuch as neither the common law nor the Statute of Uses required the employment of any special words for the limitation of a term of years (*Heyward's Case* (1595) 2 Rep. 35 a; *Edward Fox's Case* (1610) 8 Rep. 94 a; *Duxbury* v. *Sandiford* (1898) 80 L. T. 552 (C. A.)), and inasmuch as it was decided in *Barker* v. *Keat* (*supra*) that a merely nominal consideration was sufficient to raise a use for the purpose, it is sometimes extremely difficult to tell whether a lease operates at common law or under the statute. It is clear, however, that no one but a freeholder can limit a term by way of use; because no one but a freeholder can be seised to uses. A more practical classification of estates for years is to be found in the objects for which they are created, i. e. whether for occupation purposes or by way of security for money. It is clearly assumed in Littleton's well-known passages (e. g. ss. 58, 59, 66, 67), and in Coke's commentary thereupon, that the lessee for years is an occupier. But a practice, said by Barton (*Modern Precedents*, V, 133) to date from the reign of Elizabeth, grew up of effecting a mortgage of freeholds by granting a long term to a mortgagee at a nominal rent; probably to prevent claims of dower by the mortgagee's widow (*Nash* v. *Preston* (1630) Cro. Car. 190), possibly also to avoid the inconvenience of having the estate and the right to receive the mortgage money vested in different persons. This practice persisted until the beginning of the 19th century (Barton, *op. cit.* Vol. V, Precedents), but is stated by Davidson in 1869 (*Precedents*, Vol. II, Pt. II, p. 1008 n (*a*)) to have been then almost abandoned. Again, the long terms invented by the Caroline conveyancers, under the

system of strict settlements, were for the purpose of securing jointures and portions; but they were generally made by way of use (Bridgman, *Conveyances*, pp. 225, 259, 260, 332, &c.). Finally, the familiar practice of effecting mortgages of terms of years by the process of sub-demise, renders it impossible to identify the common law term with the occupation lease, and the term by way of use with the mortgage.]

Interesse termini

1120. A lease operating at the common law creates an *interesse termini* in favour of the lessee before entry, which *interesse termini* may be granted away or demised by the lessee, and will pass to his personal representatives on his death.[a] An *interesse termini* is converted into an estate for years by entry on the land by the lessee, or his personal representatives, or by any person by whom the same may have been lawfully acquired.[b]

(a) Co. Litt. 46 b.
Bruerton v. *Rainsford* (1583) Cro. Eliz. 15.
Wheeler v. *Thorogood* (1589) Cro. Eliz. 127.
Barwick's Case (1597) 5 Rep. 93 b.
Doe v. *Day* (1842) 2 Q. B., at p. 156.

[The doctrine of *interesse termini* has no application to an assignment of an existing estate for years, which vests the estate in the assignee immediately he accepts the assignment (*Williams* v. *Bosanquet* (1819) 1 B. & B. 238).]

(b) Litt. s. 58.
Co. Litt. 46 b.
Joyner v. *Weeks* [1891] 2 Q. B., at p. 47, *per* Fry, L. J.

Not an estate

1121. An *interesse termini* may be released (but not surrendered) by the owner thereof to the lessor,

and will thereupon become extinguished.[a] But the lessor cannot convey his estate to the owner of the *interesse termini* by way of release,[b] nor can he distrain on the land for rent reserved by the lease;[c] and the doctrine of merger has no application to any attempted surrender by the owner of the *interesse termini*.[d]

(a) *Salmon* v. *Swann* (1621) Cro. Jac. 619.
Rawlings v. *Walker* (1826) 5 B. & C., at p. 118, *per* Bayley, J.

[An *interesse termini* is, in fact, a mere contract (*Joyner* v. *Weeks* [1891] 2 Q. B., at p. 44, *per* Lord Esher).]

(b) Litt. s. 459.
Sheppard, *Touchstone*, p. 324.
Williams v. *Bosanquet* (1819) 1 B. & B., at p. 257.
(c) Because there is, in fact, no reversion in the lessor till the lessee has entered (*Smith* v. *Day* (1837) 2 M. & W. 684).
(d) *Rawlings* v. *Walker*, *ubi sup.*

[On the same principle, where a present estate for years and an *interesse termini* immediately expectant thereupon are vested in the same person, there is no enlargement of the former (*Lewis* v. *Baker* [1905] 1 Ch. 46).]

Rights of owner of interesse termini

1122. The owner of a valid *interesse termini* entitling him to immediate possession of the land may bring an action against the lessor[a] or a stranger[b] to recover the land, or damages for non-delivery thereof.

(a) *Coe* v. *Clay* (1829) 5 Bing. 440 (? only an action for damages).
Jinks v. *Edwards* (1856) 11 Exch. 775.
(b) *Doe* v. *Day* (1841) 2 Q. B. 147.

[*Quære:* would the owner of an *interesse termini* be entitled to enforce his claim against a *bonâ fide* purchaser of the legal estate in

reversion who, at the date of his purchase, had no notice of his claim? The *dicta* in the two cases of *Gillard* v. *Cheshire Lines Committee* (1884) 32 W. R. 943, and *Joyner* v. *Weeks* [1891] 2 Q. B. 31, as to the nature of an *interesse termini* appear to be irreconcileable; notwithstanding the fact that two of the learned judges took part in both cases.]

Actions against strangers

1123. The owner of a valid *interesse termini* may bring an action against a stranger for damage to the land; even though he is not yet entitled to possession of the land.[a] But he cannot maintain an action for trespass to the land;[b] nor (*semble*) an action for breach of covenant for quiet enjoyment, unless he has attempted to take possession, and has been prevented by the lessor or some person claiming under him.[c]

(a) *Gillard* v. *Cheshire Lines Committee* (1884) 32 W. R. 943 (C. A.).

(b) *Ryan* v. *Clarke* (1849) 14 Q. B., at p. 73, *per* Patteson, J.

[But, *semble*, if he recovered possession by ejectment, he could sue for trespass committed since his title to possession accrued (*Barnett* v. *E. of Guildford* (1856) 11 Exch. 19; *Ocean Accident Co.* v. *Ilford Gas Co.* [1905] 2 K. B. 493)]

(c) *Ludwell* v. *Newman* (1795) 6 T. R. 458.
Wallis v. *Hands* [1893] 2 Ch. 75.

Liabilities of lessee before entry

1124. The owner of an *interesse termini* is liable to the lessor on all the covenants of the lease,[a] and for payment of the rent reserved,[b] even before entry.

(a) This would seem to follow from the fact that a covenant is a contract; even though no estate has yet been created by the lease. But would an assignee of the *interesse termini* be liable?

(b) *Bellasis* v. *Burbriche* (1696) 1 Ld. Raym. 170. (The rule is different in tenancies at will.)

Reversionary lease

1125. Where a lessor creates a term of years to take effect immediately on the expiry of an existing estate for years created out of the estate out of which the future term will take effect, he nevertheless retains the reversion upon the earlier term, and will be entitled to enter on the land on the expiry of such earlier term.

Joyner v. *Weeks* [1891] 2 Q. B., at p. 47, *per* Fry, L. J.

[Care must be taken to distinguish between this case and that of a lease of the reversion upon the first term. In such a case (e. g. *Colebourn's & Mixtone's Case* (1588) 1 Leon. 129, as corrected in *Rawlings* v. *Walker* (1826) 5 B. & C., at p. 123), the lessor will have lost his right to distrain for the rent reserved by the first lease. In other words, a reversionary lease and a lease of a reversion are two different things.]

Limits of term

1126. The date of the commencement and the exact duration of an estate for years need not be specifically fixed by the lease creating it. But provision must be made by the lease for fixing such date or duration in the lifetime of the lessor; and the lease will be good only if a term certain be fixed accordingly.

J. L. v. *Potkin* (1522) Y. B. 14 Hen. VIII, Mich., at fo. 14, *per* Brudnel, C. J.

Rector of Chedington's Case (1598) 1 Rep. 152 b. (This case

suggests that the fixing must be in the lifetimes of both the parties.)
Bishop of Bath's Case (1605) 6 Rep. 35.
Kirsley v. *Duck* (1712) 2 Vern. 684.

[The cases show that there is some vagueness as to the amount of certainty requisite to constitute a good term of years.]

Commencement of term

1127. When the time of its commencement is not specified in the lease, or when the lease is expressed to take effect from the making thereof, or "from henceforth," the term is deemed to begin on the delivery of the lease.[a] But when the term is expressed to commence "from" the day of the date or making of the lease,[b] or "from" a fixed calendar date,[c] it will begin on the day following such delivery or date respectively; unless it is necessary, to render the lease effectual, that the term should begin immediately or on the specified date.[d]

(a) Co. Litt. 46 b.
Goddard's Case (1584) 2 Rep. 5 a.
Clayton's Case (1585) 5 Rep. 1.
Osbourn v. *Rider* (1606) Cro. Jac. 133.
Llewelyn v. *Williams* (1610) Cro. Jac. 258.
Hatter v. *Ash* (1696) 1 Ld. Raym. 84.
Doe v. *Benjamin* (1839) 9 A. & E. 644.

[*Semble*, where the lease is not made by deed, and the date of commencement is not fixed, the term will begin on the day on which the writing was executed, or the oral bargain made (*Jaques* v. *Millar* (1877) 6 Ch. D. 153). But a mere agreement to grant a lease, without specifying when the term is to commence, is void for uncertainty (*Marshall* v. *Berridge* (1881) 19 Ch. D. 233).]

(b) *Clayton's Case, ubi sup.*
Barwick's Case (1597) 5 Rep. 94 a.
Anon. (1611) 1 Bulstr., at p. 177, *per* Flemming, C. J.
Cornish v. *Caway* (1648) Aleyn, 75.

[But see *Bacon* v. *Waller* (1616) 3 Bulstr. 204.]

(c) *Anon.* (1773) Lofft, 275.
Ackland v. *Lutley* (1839) 9 A. & E. 879.

[It is, of course, otherwise when the term is to begin "on" a fixed calendar date (*Sidebotham* v. *Holland* [1895] 1 Q. B. 378).]

(d) *Pugh* v. *D. of Leeds* (1777) 2 Cowp. 714.

Contingent terms

1128. Subject to § 1129, the fact that a term of years is to commence, or is liable to be determined, on the happening of a contingency,(a) or is only to last until the happening of an uncertain event,(b) does not prevent it being a certain period within the meaning of § 1119.

(a) Co. Litt. 45 b.
Sheppard, *Touchstone*, 274, 284.
Goodright v. *Richardson* (1789) 3 T. R. 462.
(b) *Doe* v. *Clarke* (1807) 8 East, 183.

[It was said in *Pennant's Case* (1596) 3 Rep. 65, that, under a properly worded condition, an estate for years might become void, without necessity for entry or other act of avoidance by the lessor, on the happening of a contingency; and this doctrine is repeated in Sheppard, *op. cit.* 284. But it seems to be the better opinion, that the lessor may waive the forfeiture; in other words, that the lease becomes voidable only, not void, on the happening of the contingency. (*Rede* v. *Farr* (1817) 6 M. & S. 121.) Where the term is limited "until" the happening of an event, or "if the lessee shall so long live," it comes to an end on the event happening or the lessee dying (*Doe* v. *Clarke*, *ubi sup.*).]

Form of lease

1129. A lease for years may be created by any form of words from which it can be gathered that a person having an interest in land agrees that another shall have possession of such land for a certain

period.[a] But a mere licence to use land for a definite purpose, even for a certain period and at a fixed rent, does not create an estate for years, though followed by entry.[b]

(a) *Edward Fox's Case* (1610) 8 Rep. 93 b.
Tisdall v. *Essex* (1616) 3 Bulstr. 204.
Sheppard, *Touchstone* 271–2.
Duxbury v. *Sandiford* (1898) 80 L. T. 552 (C. A.).

[If the term is to operate under the Statute of Uses, the lessor must have an estate of freehold in the land.]

(b) *Watkins* v. *Overseers of Milton* (1868) L. R. 3 Q. B. 350.

Covenant for renewal

1130. A lease for years may contain a covenant for renewal of the term granted by it; and such covenant will be enforceable against the lessor and all persons acquiring his estate.[a] A covenant for perpetual renewal entered into in favour of the lessee and his successors in title will not be void for perpetuity;[b] but a similar covenant in favour of other persons claiming in their own right will be void.[c]

(a) *Isteed* v. *Stonelay* (1580) 1 And. 82.
Anon. (1584) Moore, 159.
Richardson v. *Sydenham* (1705) 2 Vern. 447.
Brook v. *Bulkeley* (1752) 2 Ves. Sen. 498.
Muller v. *Trafford* [1901] 1 Ch., at p. 60, *per* Farwell, J.
(b) *Bridges* v. *Hitchcock* (1715) 5 Bro. P. C. 6.
Re Mayor and Corporation of London [1910] 2 Ch. 314.
E. of Mount Edgecumbe v. *Commrs. of Inland Revenue* [1911] 2 K. B. 24.
(c) *Hope* v. *Corporation of Gloucester* (1855) 7 De G. M. & G. 647.

[Of course, the covenant for renewal only binds the estate of the covenantor, not (in the absence of special powers) any estate in remainder or reversion on it (*Muller* v. *Trafford*, at p. 62).]

Single covenant

1131. Unless a contrary intention appears, expressly or by implication,[a] a covenant to renew is presumed to be exhausted by a single exercise; and the lessee is not entitled to have a similar covenant inserted in the renewed lease.[b]

(a) *Furnival* v. *Crew* (1744) 3 Atk. 83.
Copper Mining Co. v. *Beach* (1823) 13 Beav. 478.
Hare v. *Burges* (1857) 4 K. & J. 45.

(b) *Iggulden* v. *May* (1806) 7 East, 237.
Dowling v. *Mill* (1816) 1 Madd. 541.
Brown v. *Tighe* (1834) 2 Cl. & F. 396.
Hare v. *Burges*, *ubi sup.*, at p. 54, *per* Wood, V. C. (lives).

[But see the remarks of Selborne, C., in *Swinburne* v. *Milburn* (1884) L. R. 9 App. Ca., at p. 850 (lives).]

Yearly tenancy

1132. An estate from year to year ("yearly tenancy") is created by: —

(i) any expressions in a lease from which the intention of the parties to create such an estate can be gathered;

Clarke v. *Smaridge* (1845) 7 Q. B., at p. 959, *per* Lord Denman, C. J.

[If the lease is expressed to create a tenancy 'for one year and so on from year to year,' or to that effect, the yearly tenancy does not begin till the expiry of the first year, and cannot, consequently, in the absence of express provision, be determined before the end of the second (*Denn* v. *Cartright* (1803) 4 East, 31; *Chidborn* v. *Green* (1839) 9 A. & E. 658); *Cannon Brewery* v. *Nash* (1898) 77 L. T. 648).]

(ii) a general demise, not operating as a grant for life, at an annual rent, without mention of any term;

Agard v. *King* (1600) Cro. Eliz. 775.
Roe v. *Lees* (1778) 2 W. Bl. 1171.
Richardson v. *Langridge* (1811) 4 Taunt. 128.
Lewis v. *Baker* (No. 2) [1906] 2 K. B. 599.

(iii) an occupation by permission of the owner of land, under a void lease, followed by the acceptance by such owner of a yearly rent, or some aliquot part thereof. In such a case, the terms of the void lease, in so far as the lessor had power to enter into them, and in so far as they are not inconsistent with a yearly tenancy, will be binding on the parties;

Doe d. Rigge v. *Bell* (1793) 5 T. R. 471.
Pennington v. *Tanière* (1848) 12 Q. B. 998.
Lee v. *Smith* (1854) 9 Exch. 662.
Magdalen College Hospital v. *Knotts* (1879) L. R. 4 App. Ca., at p. 335, *per* Lord Selborne.

[It seems a little doubtful how far this doctrine would apply if the lease were void under the provisions of a disabling statute. Both Lord Cairns and Lord Selborne, in *Magdalen College Hospital* v. *Knotts*, *ubi sup.*, seem to have thought that it would.]

(iv) a holding over, accompanied by payment of rent, after the expiry or determination of a previous definite tenancy, at an annual rent. In such a case, the parties will continue to be bound by such of the terms of the former lease as are not inconsistent with a yearly tenancy.

Right v. *Darby* (1786) 1 T. R. 159.
Doe v. *Watts* (1797) 7 T. R. 83.
Bishop v. *Howard* (1823) 2 B. & C. 100.
Clarke v. *Smaridge* (1845) 7 Q. B. 957.
Dougal v. *McCarthy* [1893] 1 Q. B. 736. (In this case no rent had been paid.)

[On the other hand, a person who has contracted to purchase land, and is let into possession pending completion of the contract,

is not, in the absence of special stipulation, a tenant from year to year, but a tenant at will, to the vendor (*Ball* v. *Cullimore* (1835) 2 C. M. & R. 120; *Howard* v. *Shaw* (1841) 8 M. & W. 118).]

Determination of yearly tenancy

1133. A tenancy from year to year can only, in the absence of agreement to the contrary, be terminated by six months' notice expiring at the end of a year of the tenancy;[a] and, in cases to which the Agricultural Holdings Act, 1908, applies, only by a year's notice similarly expiring, except where the lessor and lessee agree in writing to the contrary, or where a receiving order in bankruptcy has been made against the tenant.[b] Where a term expires at a certain date,[c] or on the happening of a specific event,[d] no notice to determine is necessary; except in pursuance of express agreement or the provisions of a statute.[e]

(a) *Legg* v. *Strudwick* (1709) 2 Salk. 414.
Denn v. *Cartright* (1803) 4 East, 31.

[As to the method of calculating the six months, see Bk. I, §155.]

(b) Agricultural Holdings Act, 1908, s. 22.
(c) *Messenger* v. *Armstrong* (1785) 1 T. R., at p. 154 } *per* Lord
Right v. *Darby* (1786) *ibid.*, at p. 162 } Mansfield, C. J.
Cobb v. *Stokes* (1807) 8 East, 358.
(d) *Bromfield* v. *Smith* (1805) 6 East, 530.
(e) The Agricultural Holdings Act, 1908 (s. 12 (2)), entitles the tenant of a mortgagor, whose lease is not binding on the mortgagee, in the case of all holdings to which that Act applies (s. 48), to six months' notice of termination by the latter, if the tenant holds at a

rack rent, and his term was originally not for longer than twenty-one years. It appears that the wider provision of the Tenants Compensation Act, 1890 (s. 2), giving similar protection to all occupiers of land, is now repealed. See Agricultural Holdings Act, 1908, Sched. IV, col. 3.

Option to determine

1134. When, in pursuance of an express clause in a lease, the lessor or the lessee is entitled to determine the term created by such lease before the expiry thereof, reasonable notice of his intention to exercise such right must be given to the other party.[a] In the absence of express reservation for the benefit of the lessor, an option to determine will operate only in favour of the lessee.[b]

(a) *Goodright* v. *Richardson* (1789) 3 T. R. 462.
(b) *Dann* v. *Spurrier* (1803) 3 B. & P. 399.
Doe v. *Dixon* (1807) 9 East, 14.

Rent

1135. It is not necessary to the creation of an estate for years, that a rent should be reserved by the lessor.[a] But if a rent is reserved, it must be reserved in favour of the lessor,[b] and must be of a certain fixed amount;[c] and the lessor cannot reserve as his own property any part of the annual profits of the land.[d]

(a) Litt. s. 58.
Sheppard, *Touchstone*, 268.
(b) Litt. s. 346.

(c) Litt. s. 213.
Parker v. *Harris* (1692) 1 Salk. 262. (But the amount may depend upon subsequent events (*Selby* v. *Greaves* (1868) L. R. 3 C. P. 594).)
(d) Co. Litt. 142 a.

[The rent need not consist of money (*Doe* v. *Benham* (1845) 7 Q. B. 976). And there seems no objection to a reservation as rent of a part of the ore produced under a mining lease (*Buckley* v. *Kenyon* (1808) 10 East, 139.)]

Rent incident to reversion

1136. Rent reserved by a lease is annexed and incident to, and goes with, the estate of the lessor in the land or any part thereof, notwithstanding that such estate may be divided amongst two or more persons ("severance"); and each of such persons will be entitled to recover, from time to time, the proportion of such rent which is properly attributable to his share of the reversion.[a] For the purposes of this §, a severance means a division of the lessor's estate, by operation of law or otherwise, among owners in severalty; not a vesting of such estate in co-owners.[b]

(a) Conveyancing Act, 1881, s. 10. (This enactment only applies to leases made after 31st December, 1881; but, where the rent was reserved in money or other divisible matter, the rule was the same at common law (Co. Litt. 148).)
(b) Though there is no definition of the word "severance" in the Conveyancing Act, it seems clear, from the examples of severance given in this passage by Coke, that this was the kind of severance contemplated by the common law rule. The examples are: — (1) purchase of part of the lessee's estate by the lessor, (2) recovery of part of the land by the lessor in an action of waste, (3) grant or devise of part of the reversion, (4) lawful eviction by the lessor of the lessee from a part of the land (*William Clun's Case* (1613) 10 Rep. 128 a); to which may be added (5) similar eviction by a stranger by title paramount

(*Smith* v. *Malings* (1607) Cro. Jac. 160), (6) partition among parceners (*Ewer* v. *Moyle* (1600) Cro. Eliz. 771), (7) descent of different parts of the land to different heirs, e. g. by common law and local custom (*ib.*). There was at one time some doubt whether, at the common law, apportionment could be claimed where the severance occurred by the act of the parties (*Ewer* v. *Moyle, ubi sup.*). But the opinion of Coke ultimately prevailed. The lessee is entitled to have the apportionment made by a jury (*Bliss* v. *Collins* (1822) 5 B. & Ald. 876). Of course, no division of the land which the lessee may make can affect the liability of every part of the land for the whole of the rent. But the purchaser of part of the land is not personally liable, even while the term is vested in him, for more than his due proportion of the rent, based on the value of the land at the time when the severance was made (*Salts* v. *Battersby* [1910] 2 K. B. 155).

When rent payable

1137. Where no other days of payment are fixed by the terms of the lease or the previous practice of the parties, rent is payable at the end of each year of the term [a] or of such other aliquot part of the year as is expressed in the reservation of the rent.[b] If the rent is a fixed sum for the whole term, it is payable, in the absence of contrary agreement, at the end of the term ; [c] but a rent reserved without specification of the period in respect of which it is payable will be presumed to be an annual rent.[d]

(a) *Coomber* v. *Howard* (1845) 1 C. B. 440.
Collett v. *Curling* (1847) 10 Q. B. 785.

(b) Where no express term is mentioned, the period in respect of which the rent is payable will be some indication of the intended length of the term (*Wilkinson* v. *Hall* (1837) 3 Bing. N. C. 508).

(c) There appears to be no authority for this proposition ; but it is conceived that it is correct. Rent is due on the whole of the day on which it is payable, but is not in arrear (and therefore cannot be distrained for) till after midnight of that day (*Dibble* v. *Bowater* (1853) 2 E. & B., at p. 568, *per* Lord Campbell, C. J.).

(d) *Warrington* (? *Harrington*) v. *Wise* (1596) 2 Rolle, *Ab.* 449–450.

Rights of lessee for years

1138. *Prima facie*, a lease for years gives only a right to possession and profits of the land;[a] but if it is expressed, or to be implied from the circumstances, that the lease was granted for a particular purpose or purposes, the lessee, in addition to his right to possession of the land and enjoyment of the annual profits, will be entitled, as against the lessor, to use the land in any manner reasonably necessary for carrying out such purpose or purposes.[b]

(a) *Elwes* v. *Brigg Gas Co.* (1886) 33 Ch. D. 562.
(b) *Robinson* v. *Milne* (1884) 53 L. J. Ch. 1070, *per* North, J. *Elwes* v. *Brigg Gas Co.*, *ubi sup.*

[There appears to be singularly little authority regarding the general rights of the lessee for years, as against the lessor. The apparent anomaly probably arises from the facts (1) that, in the great majority of cases, these rights are settled by the express terms of the lease, and (2) that, in the absence of such express terms, the position of the lessee is judged from the negative standpoint of the law of waste (*post*, Sect. II, Tit. III).]

Estovers

1139. A lessee for years is entitled, notwithstanding the provisions of the law against waste, but subject to the terms of his lease, to the same rights of reasonable estovers as a tenant for life (§ 1074).

Co. Litt. 41 b.

Emblements

1140. A lessee for years whose estate is determined by some uncertain event not caused by himself, is

entitled to emblements, or the statutory substitute therefor (§ 1141), in the same manner as a tenant for life in similar circumstances (§ 1075).[a] But a lessee for years whose term expires at a fixed and certain date, has no right to emblements or any substitute therefor; except in pursuance of express agreement, special custom, or statute.[b]

(a) Co. Litt. 56 a.
(b) Litt. s. 68.
Wigglesworth v. *Dallison* (1779) 1 Dougl. 201.

[The right to emblements is unaffected by the provisions of the Agricultural Holdings Act, 1908 (s. 46).]

Substitute for emblements

1141. When the lease of a farm or lands held at rack rent is determined by the death or cesser of the estate of any landlord entitled for any uncertain interest, the lessee, instead of claims to emblements, will continue to hold and occupy such farm or lands until the expiration of his then current year of tenancy, upon the terms of his lease; the lessor's successor being substituted for the lessor in respect of the period between the determination of the lessor's interest and the expiry of such current year. As between the lessor's successor and the lessee, no notice to determine such holding is necessary.

Landlord and Tenant Act, 1851, s. 1.

Compensation for improvements

1142. Except by virtue of express agreement, special custom, or statute, a tenant for years is not

entitled, at the expiration of his tenancy, to any compensation or allowance for improvements made by him, or fixtures erected by him, in or on the land.

Caldecott v. *Smythies* (1837) 7 C. & P. 808, *per* Parke, B.
Mousley v. *Ludlam* (1851) 21 L. J. C. P. 64.

[By far the most important exception from the general rule is to be found in the provisions of the Agricultural Holdings Act, 1908, under which agricultural tenants (including tenants of market gardens) can obtain compensation for improvements and fixtures (ss. 1–11). The right extends to the tenant of a mortgagor under a lease which is not binding on the mortgagee (s. 12); and cannot be waived, even by express agreement (s. 5). The method of ascertaining compensation is specially provided for by the Act (s. 13 and Sched. II); and the compensation may be made a charge on the inheritance of the reversion (s. 15). A similar protection is extended to the tenants of allotments and cottage gardens by the Allotments and Cottage Gardens Compensation for Crops Act, 1887, and the Tenants Compensation Act, 1890. As to the right of a tenant for years to remove fixtures set up by him, see *post*, Sect. II, Tit. III.]

Waste by lessee for years

1143. A lessee for years, not expressly made unimpeachable for waste, is liable to an action for damages or an account, if he commits any act of voluntary waste,[a] or (?) is guilty of permissive[b] waste, in respect of the land comprised in his lease. But no equitable remedy will be granted against a lessee for years in respect of ameliorating waste[c] (§ 1078); and a tenant from year to year is (*semble*) not liable for permissive waste.[d]

(a) Statute of Marlborough (52 Hen. III (1267)) c. 23.
Litt. s. 67.

(b) Litt. s. 71.
Co. Litt. 53 a.
Leach v. *Thomas* (1835) 7 C. & P. 327, *per* Patteson, J.
Yellowly v. *Gower* (1855) 11 Exch., at p. 294, *per* Parke, B.
Davies v. *Davies* (1888) 38 Ch. D. 499.

[There seems to be a good deal of doubt at the present day whether a tenant for years is liable for permissive waste (*Re Cartwright* (1889) 41 Ch. D. 532, which was, however, a case of a tenant for life).]

(c) *Doherty* v. *Allman* (1878) L. R. 3 App. Ca. 709.
Meux v. *Cobley* [1892] 2 Ch. 253.
(d) *Torriano* v. *Young* (1833) 6 C. & P. 8.

[The peculiarities of the action of waste have been previously noted (§ 1077 n.). The provision in the Judicature Act, 1873, s. 25 (3), respecting waste, does not affect tenants for years.]

Alienation by lessee for years

1144. Subject to the terms of his lease, a lessee for years may alienate his estate, or create any smaller term of years out of it by way of sub-demise.

[The statement in the text is so amply borne out by assumptions in statutes and decisions, that it is almost unnecessary to quote authority for it. It is, however, important to note the difference between an alienation of the lessee's estate ("assignment") and an under-lease for part of the original term. By whatever words effected (*Parmenter* v. *Webber* (1818) 8 Taunt. 593), an alienation of any part of the land for the whole term makes the alienee a tenant of the original lessor, and, therefore, liable to the lessor, so long as the estate remains in him (the alienee), by privity of estate, for the rent and covenants of the lease, in respect of that part of the land (*post*, § 1146). The lessee also remains liable notwithstanding any assignment. On the other hand, an alienation for part only of the original term makes the alienee a tenant of the original lessee, and, therefore, only an under-lessee, without privity of estate, of the original lessor, who cannot charge the alienee personally with rent and covenants, though he can, of course, pursue his remedies against the land (*Holford* v. *Hatch* (1779) 1 Doug. 1779; *Palmer* v. *Edwards* (1783) *ibid.* 186 n.). Equally clear is it, that a condition in a lease for years prohibiting alienation or

under-letting, either absolutely or on terms, is valid; for breach of such a condition is almost the only cause of forfeiture against which no relief can be given to an immediate lessee, either under statute (Conveyancing Act, 1881, s. 14) or under the general jurisdiction of the Court (*Barrow* v. *Isaacs* [1891] 1 Q. B. 417; *Eastern Telegraph Co.* v. *Dent* [1899] 1 Q. B. 835). But an underlease granted in defiance of such a prohibition none the less confers an interest in the land; though it is a ground of forfeiture (*Parker* v. *Jones* [1910] 2 K. B. 32).]

Surrender of term

1145. A transfer of the lessee's estate to the person in whom for the time being the reversion is vested, by whatever words effected,(a) operates as a surrender, and (subject to § 1041) destroys the lessee's estate by merger.(b) But when a mesne estate is surrendered, or merges, the estate which confers, as against the tenant of such term or sub-term, the next vested right to possession of the land, becomes, for the purpose of preserving the incidents and obligations of the merged estate in respect of such term or sub-term, the reversion upon any term or sub-term which may have been directly created out of the surrendered or merged estate.(c)

(a) *Cottee* v. *Richardson* (1851) 7 Exch. 143.
(b) Co. Litt. 337 b.
(c) Real Property Act, 1845, s. 9.

[At the common law, a surrender, whether by act of the parties or by operation of law, of a term out of which a sub-term had been created, destroyed the reversion on the sub-term, the owner of which, therefore, ceased to be liable for rent and other incidents of a reversion during the rest of his sub-term. In practice this rule caused extreme inconvenience, and was partially altered by s. 6 of the Landlord and Tenant Act, 1730, which applied only to terms surrendered in order to be renewed. That section is still in force;

but the act of 1845 appears to render it useless. For the case in which a trustee in bankruptcy disclaims a mesne term under his statutory powers, see Bankruptcy Act, 1883, s. 55 (6), as amended by the Bankruptcy Act, 1890, s. 13.]

Covenants running with land

1146. The benefit and the liability of covenants "touching and concerning the land,"[a] and of conditions, contained in a lease, pass to successive assignees both of the estate for years and the reversion thereon.[b] Where the reversion has been severed and the rent legally apportioned, the assignee of each part of the reversion is entitled to enforce all conditions and powers of re-entry for non-payment of the original rent contained in the lease, in respect of his part of the reversion;[c] and, in the case of leases made after the 31st December, 1881, the benefit of all conditions contained in the lease[d] will pass to the assignees of any part of the reversion, notwithstanding severance, and notwithstanding the avoidance or cesser of the term in respect of any other part of the land originally comprised in the lease.[e]

(a) Though this phrase is not statutory, it is established by a long series of decisions, beginning with *Spencer's Case* (1583) 5 Rep. 16. But it may be confessed that it is not altogether a happy attempt to limit the obviously vague language of the statute of 1540. Two recent decisions appear to suggest (a) that any covenant "touches and concerns the land" which tends to increase the value of the lessee's estate or the reversion (*Ricketts* v. *Enfield Churchwardens* [1909] 1 Ch. 544), but (2) that a mere tendency to increase the security of the covenantee's estate does not bring a covenant within the definition (*Dewar* v. *Goodman* [1909] A. C. 72). See also the general remarks of Lord Macnaghten in *Dyson* v. *Forster* [1909] A. C., at p. 102. The old distinction taken in *Spencer's Case* between things *in esse* and

things not *in esse* is probably obsolete (*Williams* v. *Earle* (1868) L. R. 3 Q. B., at p. 749, *per* Blackburn, J.).

(b) Covenants Act, 1540 (32 Hen. VIII, c. 34) ss. 1 and 2. (This statute in terms only applies to leases made by indenture (*Standen* v. *Chrismas* (1847) 10 Q. B., at p. 141); but the Conveyancing Act, 1881, ss. 10 and 11, contains no similar restriction, though its provisions only apply to leases made after 31st December, 1881; and it has been held to apply to a lease not under seal (*Rickett* v. *Green* [1910] 1 K. B. 258).) It is extremely noticeable that the Conveyancing Act, 1881 (ss. 10–12) applies exclusively, so far as the passing of *conditions* is concerned, to those entered into for the benefit of the lessor. Still, it is conceived that this omission does not affect the wider provisions of the Covenants Act, 1540, which give equal rights in respect of conditions to lessor and lessee; but make no provision for severance.

(c) Law of Property Amendment Act, 1859, s. 3. (The operation of this section appears to extend to all leases, whenever made.)

[It is hardly necessary to observe, that no severance of the lessee's interest can prevent the liabilities of the lease being enforced against the whole of the land (*Webber* v. *Smith* (1689) 2 Vern. 103).]

(d) There is no restriction, in s. 12 of the Conveyancing Act, as to the nature of the conditions which it affects. But, presumably, the principle laid down in *Spencer's Case* extends to conditions (*Horsey Estate, Ld.* v. *Steiger* [1899] 2 Q. B. 79).

(e) Conveyancing Act, 1881, s. 12. (Even at the common law, severance of the reversion, if it occurred by operation of law, did not destroy a condition (Co. Litt. 215 a; *Piggott* v. *Middlesex County Council* [1909] 2 Ch. 134.)

[It must be carefully observed, that neither the common law nor any statute confers, in the absence of expressions to the contrary, on any person other than the assignee of the reversion or of the term, any rights in respect of "running" covenants or conditions. Thus, for example, an under-lessee cannot claim the benefit of a covenant entered into by the head lessor with the under-lessor; even though the head lessor has acquired the under-lessor's estate, and the effect of the breach of covenant is to damage the under-lessee (*South of England Dairies Co.* v. *Baker* [1906] 2 Ch. 631). On the other hand, a covenant which "runs with the land," entered into since the passing of the Real Property Act, 1845, s. 5, can, if expressed to be made in favour of a stranger to the lease, be enforced by that stranger's successors in title (*Dyson* v. *Forster* [1909] A. C. 98).]

Condition against alienation

1147. Where the lease contains a covenant or condition to the effect that the lessee shall not assign, underlet, part with the possession, or dispose of the land leased, without the permission of the lessor, but that such permission shall not be unreasonably withheld: —

(i) unreasonableness on the part of the lessor will not be presumed, in the absence of clear evidence; [a] but when such unreasonableness clearly exists, the lessee may alienate, notwithstanding the refusal of the lessor's permission; [b]

(a) *Jenkins* v. *Price* [908] 1 Ch. 110.
(b) *Treloar* v. *Bigge* (1874) L. R. 9 Exch. 151.

[A declaration of the Court that the lessee is entitled to assign may also now be obtained (*Evans* v. *Levy* [1910] 1 Ch. 452).]

(ii) no action can be brought to compel the lessor to grant permission, or to obtain damages for his refusal; unless the lease contains an express contract by him to grant permission in circumstances which have happened;

Treloar v. *Bigge, ubi sup.*
Andrew v. *Bridgman* [1908] 1 K. B., at p. 598, *per* Cozens-Hardy, M. R.

(iii) no fine or sum of money in the nature of a fine may (in the absence of express provision in the lease) be exacted for or in respect of such permission; but the payment

of a reasonable sum in respect of expenses may be required,[a] and a contract to pay such a fine is not an illegal contract;[b]

(a) Conveyancing Act, 1892, s. 3. (This section, which is retrospective (*West* v. *Gwynne* [1911] 2 Ch. 1), applies to all provisions against alienation in leases; whether there is any qualification of "unreasonableness" or not.)

(b) *Andrew* v. *Bridgman* [1908] 1 K. B. 596. (But a refusal to allow alienation, except upon payment of a fine, entitles the lessee to alienate without permission.)

(iv) a stipulation that the proposed alienee shall covenant with the lessor for the payment of the rent and performance of the covenants during the remainder of the term is not a fine within the meaning of the Conveyancing Act, 1892, s. 3;[a] but a stipulation for an increased rent to be paid by the alienee is;[b]

(a) *Waite* v. *Jennings* [1906] 2 K. B. 11.

(b) *Jenkins* v. *Price* [1907] 2 Ch. 229. (The decision was reversed on appeal; but on another point.)

(v) a refusal to allow the owner of the term to assign to a corporation is, in the absence of special circumstances, an unreasonable refusal;[a] and so is a refusal to allow an assignment to the lessee's wife, except upon condition of the assignor undertaking responsibility during the whole of the term.[b]

(a) *Jenkins* v. *Price* [1908] 1 Ch. 110.
Willmott v. *London Road Car Co.* [1910] 2 Ch. 525.

(b) *Evans* v. *Levy* [1910] 1 Ch. 452.

Liability of assignee

1148. When a lease has been *bonâ fide* assigned by an assignee thereof, such assignee ceases to be liable for the rent thereby reserved or on the covenants therein contained;[a] except in so far as the rent has accrued due or breaches have been committed while the term was vested in him, and except in so far as he may have incurred liability by express contract.[b] The original lessee remains liable in respect of such rent and covenants during the continuance of the term; but he is entitled to be indemnified in respect of rent accruing and breaches incurred after he has assigned over the term, by the person in whom the term was vested when such rent accrued or breaches occurred.[c]

(a) *Barnfather* v. *Jordan* (1780) 2 Burr. 452
Chancellor v. *Poole* (1781) *ibid.* 764
Taylor v. *Shum* (1797) 1 B. & P. 21
} (rent).
Beardman v. *Wilson* (1868) L. R. 4 C. P. 57 (covenants).

[It makes no difference that the alienation was in defiance of an express covenant in the lease (*Paul* v. *Nurse* (1828) 8 B. & C. 486; *Re Johnson* [1894] 1 Mans. 54 (C. A.).) *Quære:* if there had been a condition that on such assignment the lease should be void.]

(b) *Waite* v. *Jennings* [1906] 2 K. B. 11.
(c) *Burnett* v. *Lynch* (1826) 5 B. & C. 589.
Moule v. *Garrett* (1872) L. R. 7 Exch. 101. (But the liability to indemnify only attaches to assignees in the ordinary sense of the term, not to execution creditors (*Johns* v. *Pink* [1900] 1 Ch. 296).)

Re-entry by lessor

1149. A lessor cannot, except as hereinafter mentioned, recover possession of the land during the continuance of the term, on the ground of failure

of the person in whom the term is vested to pay the rent or perform the covenants of the lease; unless there is a condition of re-entry or forfeiture to that effect.[a] But if any tenant deserts premises which have been demised at a rent equal to three fourths of their yearly value, owing a half year's rent,[b] and leaving no sufficient distress, the lessor, whether the lease contains a condition of re-entry or not,[b] may recover possession of the premises in a summary way on application to two justices, or a police or stipendiary magistrate,[c] in manner provided by the Distress for Rent Act, 1737.[d] And a lessor, under an open contract to grant a lease, is entitled to have inserted in the lease a condition of re-entry on non-payment of rent, but not on non-performance of any other covenants contained in the lease.[e]

(a) *Willson* v. *Phillips* (1824) 2 Bing. 13.
Darke v. *Bowditch* (1846) 8 Q. B. 973.

[The enforcement of conditions of re-entry in leases is subject to important statutory restrictions. (See *post*, Sect. III, Tit. I).]

(b) Deserted Tenements Act, 1817.
(c) Metropolitan Police Courts Act, 1840, s. 13.
Stipendiary Magistrates' Act, 1858, s. 1.
(d) s. 16.
(e) *Hodgkinson* v. *Crowe* (1875) L. R. 10 Ch. App. 662.
Anderton's and Milner's Contract (1890) 45 Ch. D. 476.

Recovery by lessor after expiry of term

1150. When the term created by a lease has expired or been duly determined, the lessor is entitled to recover possession of the land by peaceable entry or action of ejectment;[a] and, if the term did

not originally exceed seven years, nor the rent twenty pounds a year without fine, upon proof of neglect or refusal of the tenant or occupier to give up possession, the lessor may obtain from two justices in petty sessions, or a police or stipendiary magistrate, a warrant to secure possession through a constable, by force if necessary.[b]

(a) For details, see *ante*, Bk. II, Part III, § 825.

[A tenant who holds over after the determination of his term, and after demand and written notice, is liable to pay double value (Landlord and Tenant Act, 1730, s. 1); and a tenant who fails to deliver up possession on the expiry of a notice of quitting given by him is liable to pay double rent (Distress for Rent Act, 1737, s. 18) for the period during which he retains possession.]

(b) Small Tenements Recovery Act, 1838, s. 1.
Metropolitan Police Courts Act, 1839, s. 14.
Stipendiary Magistrates' Act, 1858, ss. 1 and 2.

[Various special statutory provisions have from time to time been passed to facilitate the recovery of parish property (Poor Relief Act, 1819, ss. 24 and 25), cottage allotments (Allotments Act, 1832, s. 6), allotment gardens (Inclosure Act, 1845, s. 111), War Office lands (Defence Act, 1859, s. 5), and Admiralty lands (Admiralty Lands and Works Act, 1864, s. 12). But these are not of sufficiently general interest to justify a detailed statement.]

Liability for quiet enjoyment

1151. In the absence of express contract, the only liability undertaken by the lessor in respect of the security of the estate of the lessee for years is a liability for quiet enjoyment by the lessee[a] during the continuance of the lessor's interest in the land.[b] Such liability extends to the acts of the lessor and those of all persons claiming through him;[c] but it

does not extend to the acts of mere tort-feasors,[d] and it is doubtful if it extends to the acts of persons claiming by title paramount.[e]

(a) Sheppard, *Touchstone*, 165.
Hall v. *City of London Brewery Co.* (1862) 2 B. & S. 737.
Baynes v. *Lloyd* [1895] 1 Q. B. 820. (But see the doubt expressed by Kay, L. J., in delivering the judgment of the C. A., in [1895] 2 Q. B., at p. 615.)
Budd-Scott v. *Daniell* [1902] 2 K. B. 351.

["Quiet enjoyment" means absence of physical interference with the enjoyment of the premises, not mere disturbance by noise, invasion of privacy, or the like (*Browne* v. *Flower* [1911] 1 Ch. 228, *per* Parker, J.).]

(b) *Swan* v. *Stransham* (1567) Dyer, 257 a.
Adams v. *Gibney* (1830) 6 Bing. 656.
Baynes v. *Lloyd*, *ubi sup.*
(c) *Markham* v. *Paget* [1908] 1 Ch. 697.
(d) *Andrew's Case*, (1591) Cro. Eliz. 214, approved in *Markham* v. *Paget*, *ubi sup.*
(e) *Bandy* v. *Cartright* (1853) 8 Exch. 913 } (aff.).
Hall v. *City of London Brewery Co.*, *ubi sup.* }
Jones v. *Lavington* [1903] 1 K. B. 253, approved in *Markham* v. *Paget*, *ubi sup.* } (neg.).
Budd-Scott v. *Daniel*, *ubi sup.* }

[It has been the subject of acute controversy whether the employment of the word "demise," or, before the passing of the Real Property Act, 1845 (s. 4) the word "grant," in a lease, created an implied warranty of title to grant the lease. Russell, C. J., in *Baynes* v. *Lloyd* [1895] 1 Q. B. 820, thought that it did; but his view was repudiated by the Court of Appeal ([1895] 2 Q. B. 610), and, if the authorities quoted by the C. J. are examined, it will be found that the only decision (as distinct from *dicta*) which involves the proposition, is the old case of *Holder* v. *Taylor* (1614) Hob. 12, where the Court of Common Pleas allowed a lessee by "demise" to recover damages against his lessor before eviction. It is curious that the Real Property Act, 1845, should not have included the word "demise" within the scope of section 4; and the omission may be claimed as an argument by either party to the controversy. *Quære:* when the term is created by way of use, is there any liability at all on the part of the lessor?]

Warranty of fitness

1152. Generally speaking, there is no implied condition or warranty (§ 342) by the lessor in a lease for years that the premises leased are suitable for the purposes for which they are let.[a] But where a furnished house is let with a view to immediate habitation, and it proves to be uninhabitable, owing to defects in the premises [b] or otherwise,[c] the lessee may repudiate the lease, and recover from the lessor any loss which he may have sustained from entering into the transaction.[d] And where a contract has been made after 2nd December, 1909, for the letting for habitation of a house or part of a house at a rent not exceeding, in London forty pounds, in any other urban district with a population according to the last census of 50,000 or upwards twenty-six pounds, in any other area sixteen pounds, there will be an implied condition to the effect that the house is, at the commencement of the holding, in all respects reasonably fit for human habitation.[e]

(a) *Sutton* v. *Temple* (1843) 12 M. & W. 52.
Hart v. *Windsor* (1843) *ibid.* 68.
Keates v. *Cadogan* (1851) 10 C. B. 591.
Lane v. *Cox* [1897] 1 Q. B., at p. 417, *per* Lord Esher, M. R.
(b) *Wilson* v. *Finch-Hatton* (1877) 2 Ex. D. 336.
(c) *Smith* v. *Marrable* (1843) 11 M. & W. 5.
Bird v. *Lord Greville* (1884) Cab. & E. 317 } (Nisi Prius).
(d) *Charsley* v. *Jones* (1889) 53 J. P. 280 }

[In the last case it was laid down, that the knowledge of the lessor as to the state of the premises was immaterial.]

(e) Housing, Town Planning, &c., Act, 1909, s. 14. (The section does not apply when the letting is for not less than three years certain, upon terms that it is to be made fit for occupation by the lessee.)

Repairs by lessor

1153. Generally speaking, a lessor is not, in the absence of express contract, bound to effect any repairs or improvements in the premises leased.[a] But in the case of a letting such as that described in the last sentence of § 1152, there is an implied undertaking that the house shall, during the holding, be kept by the lessor in all respects reasonably fit for human habitation.[b]

(a) *Pomfret* v. *Ricroft* (1670) 1 Wms. Saund. 321.
Gott v. *Gandy* (1853) 2 B. & C. 845.

(b) Housing, Town Planning, &c., Act, 1909, s. 15. (The section contains elaborate provisions enabling the landlord and the local authority to carry out the undertaking or insist on its fulfilment. There does not appear to be any provision in the Act to prevent the exclusion, by express contract, of the terms of ss. 14 and 15. But, in the cases to which the similar provisions of s. 75 of the Housing of the Working Classes Act, 1890, also apply, contracting out is forbidden by s. 12 of the Housing of the Working Classes Act, 1903.)

Satisfied terms

1154. Every term of years which becomes, either by express declaration or by operation of law, beneficially vested in or in trust for the owner of the inheritance out of which it was created ("attendant term"), thereupon absolutely ceases and determines as to the land upon the inheritance whereof it is attendant.[a] But if such term became attendant by express declaration before 1st January, 1846, it will continue, notwithstanding its determination, to afford such protection as it would have afforded, if it

had continued to subsist, but had not been dealt with, after 31st December, 1845.[b]

(a) Satisfied Terms Act, 1845, s. 2.
(b) *Ibid.* s. 1.

[The subject of attendant terms is obscure and difficult; but, briefly, it may be said to have arisen out of the practice, previously referred to (§ 1037, note), of creating long terms at nominal or no rents and liabilities, for the purpose of raising money. These terms were often (though by no means invariably) created by family settlements; and, when they were redeemed by the owner of the inheritance, or acquired by a purchaser, they were not surrendered to him, but, with excessive caution, kept alive for his benefit, so that he might be able to shelter himself behind them in the event of his title to the inheritance proving defective. The practice not only increased the cost of conveyancing; but, owing to the complications it produced, gave rise to more mistakes than it prevented. As to when a term becomes "attendant," or "satisfied," for the purposes of the Act, see *Anderson* v. *Pignet* (1872) L. R. 8 Ch. App. 180, which was not, however, a settlement term. That decision suggests that, notwithstanding the Satisfied Terms Act, a term is never deemed to be "attendant" if Equity would prevent its merger.]

Enlargement of long terms

1155. Any term, originally for not less than three hundred years, of which there are at least two hundred years to run, in respect of which no rent of a money value is actually payable,[a] and in respect of which there is no right or trust of redemption in the reversioner, may, unless it is liable to be determined by re-entry for condition broken, or unless it is a sub-term created out of a term itself not capable of enlargement under this §,[b] be enlarged by declaratory deed by the owner thereof[c] into a fee simple.[d] Such fee simple will vest in the previous owner of

the term; and be held by him subject to all trusts, powers, executory limitations over, rights, equities, covenants and provisions relating to user and enjoyment, and to all obligations, which would have affected the term if it had not been enlarged.[e] Such fee simple will include all mines and minerals under the surface comprised in the term, which were unsevered in fact or right at the date of the enlargement.[f]

(a) It is immaterial that there was once a substantial rent, if it has been released or barred by lapse of time. (Conveyancing Act, 1881, s. 65 (1).)
(b) Conveyancing Act, 1882, s. 11.
(c) Such owner includes (a) a person beneficially entitled, (b) a trustee for sale or in receipt of the income, (c) the representative of a deceased person — and whether subject to incumbrances or not. (Conveyancing Act, 1881, s. 65 (2).)
(d) *Ibid.* s. 65 (1).
(e) *Ibid.* s. 65 (4).
(f) *Ibid.* s. 65 (6).

TITLE VII—ESTATES AT WILL

Estate at will

1156. An estate at will is a possession of land by a person with the permission of another person entitled to a present interest therein, upon the terms that either party may put an end to the estate at any time. For the purposes of this Title, a copyhold estate is not an estate at will.

Co. Litt. 55 a.
Taylor v. *Ashe* (1633) Vin. *Ab.* X, 396.
Blunden v. *Baugh* (1634) Cro. Car., at p. 303, *per Curiam.*

[It may well be doubted whether a so-called 'estate at will' is really an estate at all; but it is often described as such. No fealty is owed by the tenant in respect of it; and a rent reserved out of it, though it may be distrained for, is not rent service (Co. Litt. 57 b). No remainder can be limited on a so-called estate at will (*Stafford's Case* (1609) 8 Rep., at 75 a); and, neither before nor since the passing of the Juries Act, 1825, has such an estate been a qualification for jury service (32 Hen. VIII (1543) c. 6, s. 3; 27 Eliz. (1585) c. 6, s. 1; Juries Act, 1825, ss. 1, 50, 52). On the other hand, the doctrine that a tenant is estopped from denying his lord's title (*ante*, § 1038 (iv)) applies to a tenancy at will (*Morton* v. *Woods* (1868) L. R. 3 Q. B. 658); and a tenant at will can take the reversion on his estate by release (Co. Litt. 270 b). It was the practice of some of the older writers (e. g. Blackstone) to class all copyhold estates as estates at will; but as the copyholder has long been protected by the King's Courts from arbitrary ejectment by his lord, this classification is manifestly untenable.]

1157. A tenancy at will is created —

How created

(i) by entry under an express agreement for tenancy at the will of the lessor or the

lessee,[a] or for an indefinite period (unless a freehold is created);[b]

(a) Litt. s. 68.
Co. Litt. 55 a.
Taylor v. *Ashe* (1633) Vin. *Ab.* X, 396.
(b) *Anon.* (1572) 4 Leon. 33, *per* Manwood, J.
Cadee's and Oliver's Case (1587) 3 Leon. 153.
Bishop of Bath's Case (1605) 6 Rep., at 35 b.
Blamford v. *Blamford* (1615) 3 Bulst. 100.
Anderson v. *M. R. Co.* (1861) 3 E. & E. 614.

[If it is clear from the facts, that the parties intended to create a tenancy at will, the circumstance that a definite term of years is mentioned will not affect the character of the tenancy (*Morton* v. *Woods* (1868) L. R. 3 Q. B. 658). On the other hand, an express tenancy "from year to year" will not be converted into a tenancy at will, merely because it contains a power enabling the lessor to put an end to it at any time (*Re Threlfall* (1880) 16 Ch. D. 274). But the rule that an indefinite grant (not being of a freehold) creates an estate at will, does not hold against the Crown; a Crown grant of that nature being void for uncertainty (*Alton Woods Case* (1600) 1 Rep., at 43 b).]

(ii) by entry under a lease for so many years as a third person shall name — until such third person has named the term;

Bedford v. *Johnson* (1659) 2 Sid. 153.

(iii) by entry, under a void title, upon the land of another, followed by an acquiescence of that other after knowledge of the entry;

Litt. s. 70.
Statute of Frauds (1677) s. 1.
Blunden v. *Baugh* (1631) Cro. Car., at p. 303, *per Curiam.*
Denn v. *Fearnside* (1747) 1 Wils. 176.
Smith v. *Widlake* (1877) 3 C. P. D. 10.

(iv) by a holding over of a tenant, with the acquiescence of the landlord, after the expiry of the tenant's interest;]

Barham v. *Hayman* (1559) Dyer, 173 a.
Bedford v. *Johnson, ubi sup.*
Sir Thomas Bowes' Case (1670) Vin. *Ab.* X, 400.
Turner v. *Bennett* (1841) 11 L. J. Exch. 453.

[Acceptance of rent by the lessor, in either of the last two cases, at any rate if the rent is accepted for any aliquot part of a year, converts the tenancy into a tenancy from year to year (*Wood* v. *Beard* (1876) 3 Ex. D. 30; *ante*, § 1132 (iv)).]

(v) by the occupation of a mortgagor, with the consent of the mortgagee, under a mortgage by which the legal estate in the land passes to the mortgagee;

Powsley v. *Blakeman* (1622) 2 Rolle, 284.
Freeman v. *Barnes* (1646) Sid., at p. 460, *per Curiam.*
Holland v. *Hatton* (1697) Carth. 414.
Keech v. *Hall* (1778) 1 Dougl. 22.

[There appears at one time to have been a good deal of doubt, whether the relation of lessor and tenant at will is created between a mortgagee and a mortgagor by the mere occupation of the mortgaged premises by the latter without any attornment or tenancy clause (see the remarks of Buller, J., in *Birch* v. *Wright* (1786) 1 T. R., at p. 383, of Patteson, J., in *Doe* v. *Williams* (1836) 5 A. & E., at p. 297, of Best, C. J., in *Doe* v. *Giles* (1829) 5 Bing., at pp. 426–7, and of Lord Denman, C. J., in *Doe* v. *Barton* (1840) 11 A. & E., at p. 314.) On the other hand, it seems quite clear that, as against a stranger, the mortgagee may treat the mortgagor in possession as his tenant (*Partridge* v. *Bere* (1822) 5 B. & Ald. 604; *Hitchman* v. *Walton* (1838) 4 M. & W. 409; both approved in *Doe* v. *Barton*, *ubi sup.*). It would seem, then, that it is at the option of the mortgagee to treat the mortgagor in possession as a tenant at will or as a mere tenant at sufferance. But modern legislation, which has conferred many rights of dealing with the property on the mortgagor, is certainly against the presumption that he is a wrong-doer; and the statement in the text probably represents the modern view. It would seem, however, that, in order

to constitute a tenancy at will, there must be an actual recognition by the mortgagee of the mortgagor's holding (*Scobie* v. *Collins* [1895] 1 Q. B. 375). And a mere covenant by the mortgagee that he will not take any of the profits of the land until default, does not, of itself, create a tenancy at will in the mortgagor (*Powsley* v. *Blakeman ubi sup.*). In *Sands to Thompson* (1883) 22 Ch. D., at p. 616, it was said by the Court, that a mortgagor who had paid off the mortgage without taking a reconveyance was a tenant at will to the mortgagee. *Sed quære.*]

(vi) by the occupation by a *cestui que trust*, with the permission of the trustee in whom the legal estate in the land is vested;

Freeman v. *Barnes*, *ubi sup.* (so taken in *Garrard* v. *Tuck*).
E. Pomfret v. *Lord Windsor* (1752) 2 Ves. Sen., at p. 481, *per* Hardwicke, C.
Garrard v. *Tuck* (1849) 8 C. B., at p. 250.
Melling v. *Leak* (1855) 16 C. B. 652.

[For the purposes of the Real Property Limitation Act, 1833, s. 3, the possession of the *cestui que trust* is the possession of the trustee (*Garrard* v. *Tuck*, *ubi sup.*, at p. 252). Apparently this is also the rule for other purposes (*Geary* v. *Barecroft* (1667) 1 Sid. 346).]

(vii) by the admission to possession of the land, with the consent of the vendor, of a person who has contracted to purchase an interest in or take a lease of the land, pending completion of the contract.

Hamerton v. *Stead* (1824) 3 B. & C., at p. 483, *per* Littledale, J.
Saunders v. *Musgrave* (1827) 6 B. & C. 524.
Ball v. *Cullimore* (1835) 2 C. M. & R. 120.
Howard v. *Shaw* (1841) 8 M. & W. 118.
Coatsworth v. *Johnson* (1886) 54 L. T. 520; 55 L. J. Q. B. 220.

[Care must be taken to distinguish between a tenant at will and a servant occupying his master's property (*Mayhew* v. *Suttle* (1854) 4 E. & B. 347 (public-house manager); *White* v. *Bayley* (1861) 10 C. B. N. S. 227 (Society's manager)).]

Termination of tenancy at will

1158. A tenancy at will is determined by—

(i) a demand of possession on the part of the lessor, communicated to the lessee;

Co. Litt. 55 b.
Nicholl v. *McKaeg* (1830) 10 B. & C. 721.
Tomes v. *Chamberlain* (1839) 5 M. & W. 14.

(ii) an entry on the land by the lessor, without the assent of the lessee;

Co. Litt. 55 b.
Lomes v. *Chamberlain, ubi sup., per* Parke, B.

[Unless the entry is for the purpose of doing an act which the lessor is entitled to do without putting an end to the tenancy (Co. Litt. 55 b).]

(iii) an attempted assignment of his interest by the lessee, of which the lessor has notice;

Pinhorn v. *Souster* (1853) 8 Exch. 763.
Malling v. *Leak* (1855) (?) 16 C. B. at p. 669, *per Curiam.*

(iv) the death of the lessor or the lessee;

Co. Litt. 57 b, 62 b.
Scobie v. *Collins* (1895) 1 Q. B. 375.

[Even if the lease was expressly worded to hold to the lessee and his heirs at the will of the lessor, the lessee's heir is a trespasser if he enters (Litt. s. 82). Outlawry of either party is said also to determine the tenancy (*Oland's Case* (1602) 5 Rep. 116 b).]

(v) any other act of the lessor or the lessee, which comes to the knowledge of the other party, and which shows an intention to put an end to the tenancy.

Dimsdale v. *Isles* (1672) 3 Keb. 166, 207.

[The hardships involved in this last rule, in the case of tenancies at a rent, were so obvious, that the Courts at an early date attempted

to lay it down, that certain reasonable restrictions must be imposed upon it, e.g. that a tenant must not determine his tenancy just before rent becomes due (*Anon.* (1505) Keilw. 65). But the tendency, previously referred to (§ 1132 (ii)) to treat any payment and acceptance of rent for an aliquot part of a year as evidence of a tenancy from year to year, which is manifest as early as *Agard* v. *King* (1600) Cro. Eliz. 775, has put an end to many of these refinements. The Apportionment Act, 1870, by making rent accrue from day to day, has removed other difficulties. A summary of the old restrictions laid down to enforce 'reasonableness' will be found in Viner, *Ab.* X, pp. 406–7.]

No notice to determine

1159. No previous notice of his intention to terminate a tenancy at will need be given either by the lessor or the lessee. But the lessor cannot recover in ejectment against the lessee; unless the tenancy has been already determined. This latter rule has no application to a mortgagee seeking to eject the mortgagor from the mortgaged premises.

Doe v. *Giles* (1829) 5 Bing. 421 (assumed).
Hitchman v. *Walton* (1838) 4 M. & W., at pp. 414, 415, *per* Lord Abinger, C. B., and Parke, B.

Rent may be distrained for

1160. If a rent certain is reserved on the creation of a tenancy at will, the lessor may distrain for rent in arrear.

Litt. s. 72.
Co. Litt. 57 b.
Anderson v. *M. R. Co.* (1861) 3 E. & E. 614.

[Coke (Co. Litt. 57 b) and, following him, Blackstone (*Comm.* II, 146) state, that if the lessor impounds the distress on the land, the will is determined. *Sed quære.* See Distress for Rent Act, 1737, s. 10.]

Tenant at will entitled to profits

1161. A tenant at will is entitled to the profits of the land, including reasonable housebote (*ante*, § 1074).

Y. B. 12 Edw. IV (1473) Pasch. pl. 20, *per* Choke, J.
R. v. *Winter* (1705) 2 Salk. 588, *per* Powel, J.
Bennett v. *Turner* (1840) 10 L. J. Exch. 213.
Trent v. *Hunt* (1853) 9 Exch. 14.

And emblements

1162. A tenant at will whose tenancy is determined by some uncertain event not caused by himself is entitled to emblements, or the statutory substitute therefor (§ 1141), in the same manner as a tenant for life in similar circumstances.[a] This rule has no application to a mortgagor occupying the mortgaged premises with the consent of the mortgagee.[b]

(a) Litt. s. 68.
Co. Litt. 55.
Landlord and Tenant Act, 1851, s. 1.
(b) *Barden's and Withington's Case* (1587) 2 Leon. 54.
Keech v. *Hall* (1778) 1 Dougl., at p. 22, *per* Lord Mansfield, C. J.
Moss v. *Gallimore* (1779) 1 Dougl., at p. 283, *per* Buller, J.
Birch v. *Wright* (1786) 1 T. R., at p. 383, *per* Buller, J.
Doe v. *Giles* (1829) 5 Bing., at p. 427, *per* Best, C. J.

[The tenant at will of a house who is put out by his lessor is entitled, within a reasonable time, to remove his goods (Litt. s. 69).]

May bring trespass and ejectment

1163. A tenant at will may maintain the actions of Trespass[a] and Ejectment[b] (*ante*, Book II, Pt. III, Sect. II, Titt. I and II, §§ 814, 829), if his pos-

session of the land is wrongfully interfered with or taken from him.

(a) *Geanes* v. *Portman* (1594) Cro. Eliz.
(b) *Blunden* v. *Baugh* (1634) Cro. Car. 305, *per* Jones, Berkeley, and Croke, JJ., quoting *Spark* v. *Spark* (1559–60), which was, however, a copyhold case. It seems that the lessor at will can also bring Ejectment (*Geary* v. *Barecroft* (1667) 1 Sid. 346. But there the tenant at will was a *cestui que trust*).

Liable for voluntary waste

1164. A tenant at will, not expressly made unimpeachable for waste, is liable for positive ("voluntary") waste. But he is not liable, in the absence of express stipulation, for permissive waste (*post*, Sect. II, Tit. III).

Litt. s. 71.
Co. Litt. 57 a.
Countess of Shrewsbury's Case (1600) 5 Rep. 13 b.
Harnett v. *Maitland* (1847) 16 M. & W. 257.

Alienation by tenant at will

1165. It is doubtful whether an attempted alienation of his interest by a tenant at will vests anything in the alienee.

Broughten's Case, Y. B. 22 Edw. IV (1482) Pasch. pl. 16, *per* Brian, J.
Co. Litt. 57 a.
Anon. (n. d.) 1 Brownl. 43.
Murphy v. *Ford* (1855) 5 Ir. C. L. R. 19.

[The argument seems to be, that an alienation by a tenant at will is a determination of his will. But an assignment is not a determination, unless the lessor has notice of it (*Carpenter* v. *Colins* (1605) Yelv. 73; *Pinhorn* v. *Souster* (1853) 8 Exch. 763, *ante*, § 1158 (iii).) It was held in *Rouse's Case* (1587) Owen, 28; *Blunden* v. *Baugh* (1634) Cro. Car., at p. 304; and *Goody* v. *Carter* (1847) 9 Q. B. 863, that a lease for years or at will by a tenant at will was binding on all persons but the original lessor.]

Species of future interests

1166. By operation of law or by act of the parties, an estate may, subject to the Rule against Perpetuities and to the other restrictions set forth in this Title, arise or be created to take effect in possession at a future date, certain or uncertain. Such an estate takes effect either by way of reversion, or of remainder, or of executory interest.

[The notion of interests in land not clothed with possession may be said to be alien to a system of law in which possession was long regarded as the best, if not the only satisfactory, evidence of ownership. But in fact the recognition of such interests followed, almost inevitably, from the fundamental doctrine (*ante*, § 1037 n.) which regarded every estate in land as derived from the estate of a superior; for it was substantially, if not logically, impossible to deny to the superior an interest in the land, even though, by his own act, he had deprived himself of possession. Accordingly, some place had to be found for the interest of the superior; and, ultimately, it was classed as a future estate, though, as Ventris, J., pointed out, in his elaborate judgment in the leading case of *Dighton* v. *Greenvil* (late 17th cent.) 2 Vent., at p. 328, a reversion is really a present interest, because, in theory at least, it carries enjoyment of the services of the tenant, though it does not confer possession. It was, probably, the technical difficulty of admitting two independent seisins of the same land, that was responsible for the classification; for it was impossible to allow seisin to the reversioner, where the particular tenant had a freehold estate. But, as a mere estate for years does not carry seisin, a reversion thereon is, as we shall see (§ 1167) for some purposes regarded as a corporeal hereditament, and, as such, carries seisin. Very early also was recognized another class of interests, which conferred neither present enjoyment of the services nor present possession; and the idea of the remainder, which was evidently approaching in Bracton's day (*Liber de Legibus Angliæ*, fo. 18 b) through the medium of conditional limitations, was fully recognized by Littleton (ss. 716–719) at the end of the fifteenth century; though the creation and operation of remainders were hedged about, as will appear, by elaborate rules to prevent abeyance

or interruption of the seisin. Shortly after Littleton's time (Co. Litt. 378 a), a further development of the theory of remainders admitted of their creation in favour of unascertained persons — a practice which, though condemned by Littleton (s. 721), obviously, when recognized, added greatly to the powers of disposition enjoyed by landowners. Meanwhile, the freedom allowed by the Court of Chancery in dealing with the use, or beneficial interest in land held by a fiduciary owner, permitted the creation of almost any future or contingent interests of an equitable kind; and when these were, by the Statute of Uses, converted into legal estates, a third class of future interests (known as 'executory interests') became possible. During the seventeenth and eighteenth centuries, the common law courts continued to give some effect to the strict rules which still bound the creation and operation of remainders; but, as will be seen, during the nineteenth century, partly by statute, partly by judicial decision, remainders and executory interests have been very largely assimilated, at least so far as settlements dated after 1877 are concerned. Nevertheless, it is still quite impossible for any systematic statement of the law to ignore the technical differences between them.]

Reversion

1167. A reversion arises by operation of law whenever a smaller ('particular') estate is created by act of the parties out of a larger, by any limitation which does not at the same time dispose of the residue of the estate of the creator to a third party.[a] When the particular estate is an estate of freehold, the reversion arising in the creator is an incorporeal hereditament.[b] When the particular estate is an estate for years, the reversion arising in the creator is for some purposes (§ 1170 n.) deemed to be a present estate subject to the term of years.[c]

(a) Litt. s. 19; Co. Litt. 22 b. (The fact that the creator of the smaller estate expressly limits or reserves the residue to himself or his heirs, is immaterial (*ibid.*); except that such a limitation

now makes the creator a purchaser for the purposes of the law of inheritance (Inheritance Act, 1833, s. 3).)

(b) And therefore it lay in grant at the common law (Litt. s. 554, &c.; *Throgmorton* v. *Tracey* (1555) Dyer, 124 b. The last is one of the best general authorities on the nature of a reversion). And no dower could be claimed in respect of it (*D'Arcy* v. *Blake* (1805) 2 Sch. & Lef., at p. 390, *per* Redesdale, C. (I)).

(c) *Walter* v. *Yalden* [1902] 2 K. B. 304. (Apparently it lay both in livery and in grant at the common law (Co. Litt. 48 b and 49 a; *Anon.* (1537) Dyer, 33 a; *Doe* v. *Cole* (1827) 7 B. & C. 243.)

[The interest retained by the creator of an estate in fee simple is called a "seignory." With rare exceptions (§ 1044) a seignory must have been created before the passing of the statute *Quia Emptores* in 1290; and, not unnaturally, its incidents are now of small practical value. The most conspicuous is the right to claim the possession of the land as an "escheat"; should the tenant of the fee simple die intestate and without heirs. But this is little more than the right of every reversioner to claim the land on the expiry of the particular estate.]

Rights of reversioner

1168. The owner of a reversion is, subject to express restriction, entitled to all the rights in respect of the land specified in § 1040, and to such other rights as may have been expressly reserved, excepted, or otherwise created, by the instrument under which his reversion arises.

[The owner of a reversion is, by his very definition, the 'lord' of the owner of the particular estate, and, as such, entitled to the incidents of lordship.]

Declaration of title

1169. The owner of a fee simple reversion on a term of years in land, whether absolute or subject to any incumbrances, estates, rights, or interests, vested

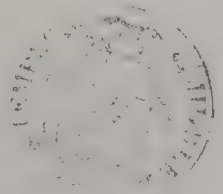
or contingent, and every person claiming to have a power of disposing of such an interest for his own benefit, may apply to the Chancery Division of the High Court for a declaration of the validity of his title; and such declaration may be granted under the conditions prescribed by, and will be valid to the extent described in, the Declaration of Title Act, 1862.

Declaration of Title Act, 1862, ss. 1, 48.

Alienation by reversioner

1170. The owner of a reversion may by deed or testament alienate his estate without the consent of the owner of the particular estate.

[This rule, though contrary to feudal principles, was early established in the common law; for Bracton (*op. cit.* fo. 82), after some little hesitation, states roundly, that services can always be assigned, at any rate by fine, though the right to receive the tenant's homage cannot be transferred without the tenant's consent. Apparently, Bracton's view soon prevailed; for, though the attornment, or consent of the tenant to hold under the transferee, was still required, the *Old Natura Brevium* (*temp.* Edward III, ed. Pynson (n. d.) fo. xlix; ed. Tottell (1584) ff. 168–170) contains two forms of writ (*Quid Juris Clamat*, and *Per Quae Servitia*) which can be traced back to Bracton's own day, devised to compel the tenant, not being a tenant in tail (*Lewis Bowles' Case* (1615) 11 Rep. 80 a) to attorn or to be attorned. It is worth noting, that Fitzherbert, whose (*New*) *Natura Brevium* was printed in 1534, though obviously aware of the existence of these writs (*op. cit.* 49 H, 147 A), did not think it worth while to reproduce them; but it would not, perhaps, be safe to attribute the omission to anything but the fact that they were not Writs Original, with which Fitzherbert was mainly concerned. The *Quid Juris Clamat* is given in the printed Register of 1687 (*Judicialium*, ff. 36, 57). Meanwhile, the passing of the



Statute of Uses had dealt a further blow at the theory of feudal allegiance; for it was soon afterwards held (*Heyward's Case* (1595) 2 Rep. 34 b) that a conveyance which operated by virtue of the statute passed the reversion without attornment of the tenant. Finally, in 1705, a statute (4 & 5 Anne, c. 16, s. 9) abolished the necessity for attornment in all "grants and conveyances" of reversions. Apparently, attornment still remains necessary where the reversioner comes in by hostile title (*Harris* v. *Booker* (1827) 4 Bing. 96). Any act which recognizes the position of the new reversioner will be sufficient as an attornment (*Gladman* v. *Plumer* (1845) 15 L. J. Q. B. 79). The attornment of the tenant to a stranger, which formerly worked serious detriment to the reversioner, no longer has any effect (Distress for Rent Act, 1737, s. 11); except (possibly) as a disclaimer involving forfeiture of the tenant's interest. A tenant is protected if he pays rent to the former reversioner without notice of the transfer of the reversion (4 & 5 Anne, c. 16, s. 10). With regard to the form by which a reversion could be transferred, it seems quite clear that, subject to the necessity for attornment, a reversion, whether a true reversion on a freehold estate, or a so-called reversion on a term of years, could, by Littleton's day, be transferred by deed of grant (Litt. ss. 567–8).]

Possibility of reverter

1171. A possibility of reverter arises in the donor or his heirs upon a grant or devise of a determinable fee simple (*ante*, § 1052), or an estate defeasible on the happening of a condition subsequent (*post*, Sect. III, Tit. I).[a] Such a possibility may be devised, or assigned *inter vivos* by deed.[b]

(a) *Simpson* v. *Simpson* (1838) 4 Bing. N. C. 333.
Pemberton v. *Barnes* [1899] 1 Ch. 544.
(b) Wills Act, 1837, s. 3.
Real Property Act, 1845, s. 6.
Pemberton v. *Barnes*, *ubi sup.*

[A fee simple conditional will merge in the possibility of reverter expectant upon it (*Simpson* v. *Simpson*, *ubi sup.*). A difficulty arises where there is a limitation of a contingent remainder in fee simple.

According to Coke (Co. Litt. 342 b) and Blackstone (*Comm.* II, 107), the fee is in abeyance so long as the contingency may, but does not take effect. Clearly, however, some interest remains in the donor; but whether a reversion or some other species of interest may be doubted, though Fearne (*Contingent Remainders*, pp. 359–364) takes the former view. The point does not, at the present day, seem to be of practical importance. The effect of the Contingent Remainders Act, 1877, on such a case should, however, be noted.]

Remainders vested and contingent

1172. Subject to the Rule against Perpetuities (*post*, § 1181 n.), and the Rule against Double Possibilities (*post*, § 1179), a remainder is created whenever an estate of freehold or copyhold[a] is limited to a person other than the settlor, to take effect in possession on the expiry[b] of a preceding estate of freehold duration,[c] limited by the same conveyance.[d] If such remainder is limited absolutely to an existing and ascertained person or persons, it is said to be "vested"; if it is limited in favour of an unborn or unascertained person or persons, or in favour of an ascertained person or persons on the happening of an event other than the expiry of the particular estate, it is said to be "contingent."[e] Upon the happening of the contingency, a contingent remainder is said to be vested.[f]

(a) There can be no doubt, whatever the difficulties of the theory, that copyhold remainders have been recognized almost ever since the recognition of copyhold tenure itself by the King's Courts. (*Brown's Case* (1581) 4 Rep., at 22 b; *Fitch* v. *Stuckley* (1594) *ibid.* 23 a). On the other hand, a common law term of years to take effect *in futuro*, though it may be loosely styled a re-

mainder, cannot be anything more than an *interesse termini;* because the person in whose favour it is limited cannot enter under it until the expiry of the particular estate (*Corbet* v. *Stone* (1653) Sir T. Raym., at p. 151). In *Geary* v. *Barecroft* (1665) 1 Sid. 346, it was said by the Court, that even an estate at will could be limited by way of remainder.

(b) It is important to notice, that the remainder must contemplate neither (α) premature determination of the particular estate, for that would involve an interruption of the seisin (which was disliked by the common law), nor (β) entry for condition broken, which can only be reserved to the donor, nor (γ) an interval between the expiry of the particular estate and the taking effect in possession of the remainder, for that would involve an abeyance of the seisin, a result also repugnant to the common law. (See the arguments and opinions of the Court in *Colthirst* v. *Bejushin* (1550) 1 Plowd. 21, and *Corbet* v. *Stone, ubi sup.*) "On the expiry" appears, then, to be the correct phrase.

(c) The necessity for a particular estate of freehold to support a remainder of freehold is obvious on common law principles; for a freehold estate could at the common law only be limited *in pais* by a feoffment, and a feoffment involved livery of seisin. But an apparent exception to this rule could be made by enfeoffing a tenant for years on behalf of an ascertained so-called remainderman, who thus, in fact, acquired a present estate subject to the term. This is the explanation of the passage in Littleton (s. 60), which has puzzled so many readers; and presumably the same result might be produced by an appropriately worded deed under the Real Property Act, 1845. Obviously, no contingent remainder (so called) could be limited in either of these ways.

(d) Co. Litt. 49 a.

(e) Co. Litt. 378 a; *Whitby* v. *Von Luedecke* [1906] 1 Ch. 783. (As pointed out above, Littleton (s. 721) was unwilling to admit the legality of contingent remainders; but for once his distinguished commentator did not agree with him. The truth probably is, that the question was an open one in Littleton's day, and, before Coke wrote, had been definitely settled in the affirmative (*Colthirst* v. *Bejushin* (1550) 1 Plowd. 21).)

(f) *Archer's Case* (1597) 1 Rep. 66 b.

Freehold in futuro

1173. Any attempt to limit a freehold to commence at a future date, otherwise than as a re-

mainder upon a particular estate of freehold, or as an executory interest (*post*, § 1183) is void *ab initio*.

Helier v. *Okeden* (1560) Moo. 14.
Barwick's Case (1597) 5 Rep. 93 b (3rd resolution).
Pay's Case (1601) Cro. Eliz. 878.

[There seems to be no corresponding rule with regard to copyholds or estates for years. But the doctrine extends to limitations of existing future interests of freehold (*Wrotesley* v. *Adams* (1559) Plowd. 187; *Buckler* v. *Harvey* (1594) Cro. Eliz. 450).]

No remainder after a fee simple

1174. No remainder may be limited to take effect on the expiry of a fee simple;[a] but alternative contingent remainders in fee simple may be limited, in such a manner that only one of them can possibly take effect.[b]

(a) Co. Litt. 18 a.
Blackstone, *Comm.* II, p. 164.
Musgrave v. *Brooke* (1884) 26 Ch. D. 792.

[This is the logical result of the fact, that a fee simple is the greatest estate known to the law, combined with the working of the statute *Quia Emptores*, which forbids any attempt to create an estate in fee simple by subinfeudation. Having limited a fee simple, the settlor has nothing left to give. The rule applies, according to Lord Hardwicke, even to determinable fees (*E. of Stafford* v. *Buckley* (1750) 2 Ves. Sen., at p. 180).]

(b) *Loddington* v. *Kime* (1694) 1 Salk. 224.
White's and Hindle's Contract (1877) 7 Ch. D. 201.

[Thus, for example, a limitation to A for life, remainder to B in fee simple if he should survive A, if not, to C in fee simple, would be a perfectly good limitation. But any attempt to provide for the transfer of the fee simple to C, after it had once vested in B, would be bad as a remainder; though it might be good if effected by executory limitation (*post*, § 1182).]

Cross remainders

1175. Where there is a single devise [a] of land to two or more persons as tenants in common in tail, with a gift over in the event of such persons all dying without issue, then, from time to time, on the death without issue of any one of such persons, the survivor or survivors (if any) and the issue (if any) of a deceased devisee or devisees (if any) will take *per stirpes* (and, if more than one, as tenants in common) an estate tail in remainder of the same kind in the share of such person dying without issue, before the gift over takes effect.[b] The rule has no application to limitations *inter vivos*;[c] except that it has been applied to marriage articles.[d]

(a) There is no implication if there are several gifts of separate properties (*Clache's Case* (1572) Dyer, 330b; *Gilbert* v. *Witty* (1621) Cro. Jac. 655).
(b) *Anon.* (1570) Dyer, 303 b.
Huntley's Case (1572) *ibid.* 326.
(c) *Cole* v. *Levingston* (1672) 1 Vent. 224.
Doe v. *Dorvell* (1794) 5 T. R. 518.
(d) *West* v. *Errissey* (1726) 2 P. Wms. 349 (H. L.).
Twisden v. *Lock* (1768) 2 Amb. 663.

[In *Cole* v. *Levingston* it is suggested that there cannot be cross remainders by implication where the devise is to more than two persons. But this doctrine has since been disapproved (*Hannaford* v. *Hannaford* (1871) L. R. 7 Q. B. 119; *Re Ridge's Trusts* (1872) L. R. 7 Ch. App., at p. 668, *per* James, L. J. Obviously there can be no cross remainders in fee simple (see § 1173).]

Cross remainders for life

1176. Where there is a single devise to two or more persons as tenants in common for life, with a gift over on the death of the survivor or all of them,

then, from time to time, on the death of any of such persons, the survivor or survivors (if any) will take (and if more than one as tenants in common) an estate for life in the share of such deceased person, before the gift over takes effect.[a] The rule has no application to limitations *inter vivos;* except that it has been applied to marriage articles.[b]

(a) *Ashley* v. *Ashley* (1833) 6 Sim. 358.
Parfitt v. *Hember* (1867) L. R. 4 Eq. 443.
(b) *Twisden* v. *Lock, ubi sup.*

[Where in a devise cross remainders are expressly limited in one event, they cannot be implied in another (*Rabbeth* v. *Squire* (1859) 4 De G. & J. 406).]

Remainders and executory limitations

1177. A limitation which is capable of being construed as a remainder must, whether made by deed or by testament, and whether by common law conveyance or by instrument operating under the Statute of Uses, be so construed; even though it might conceivably be construed as an executory limitation (*post*, § 1183).

Chudleigh's Case (1589) 1 Rep. 113 b.
Purefoy v. *Rogers* (1671) 2 Wms. Saund. 380.
Cole v. *Sewell* (1843) 4 Dr. & W. 1, *per* Sugden, C.
White v. *Summers* [1908] 2 Ch. 256 (explaining *Re Wrightson* [1904] 2 Ch. 95).

[This is one of the means before referred to (§ 1165, n.), by which the common law courts, subsequently to the passing of the Statute of Uses, succeeded in keeping alive the technical rules affecting remainders, notwithstanding the growing popularity of executory interests. It has little practical effect upon limitations created after 2nd August, 1877; because, if these cannot take effect as remainders, they may yet take effect as executory interests (Contingent Re-

mainders Act, 1877). But, though it is rarely that a limitation is capable of being construed both as a remainder and as an executory interest, there is one important species of limitation, viz. gifts to a class, which causes difficulty, and in respect of which, especially if made before 2nd August, 1877, the § is important. Thus, if there is a devise of land to A for life, and, after his decease, to such of his children as shall attain 21, the limitation in favour of A's children must be construed as a remainder; and, consequently, only those children who attain 21 before A's death will be entitled, subject to the Contingent Remainders Act, 1877, to take under it (*Festing* v. *Allen* (1843) 12 M. & W. 279). And limitations by way of use are, for this purpose, construed in the same way as common law limitations (*Tapner* v. *Merlott* (1739) Willes, at p. 180, *per Curiam*). But if the words used by the settlor are inconsistent with the creation of a true remainder, e. g. if they contemplate a defeasance of the prior estate, or if the gift is "to all the children of A who shall attain 21, whether in A's lifetime or afterwards," then the gift will be construed as an executory limitation, and, therefore, all A's children will be admitted to share, whenever born (*Re Lechmere and Lloyd* (1881) 18 Ch. D. 524; *Blackman* v. *Fysh* [1892] 3 Ch. 209). Even with regard to limitations created after 1877, the rule may still have some importance, e. g. a limitation to A for life, and after his death to the first of his sons who attains 24. As an executory limitation, this would be clearly bad; but it might take effect as a remainder if, in fact, A left a son who had attained 24 in his lifetime (*Re Wrightson* [1904] 2 Ch. 75). Finally, it should be noted, that a devise which, originally, was clearly framed as a remainder, may, according to the circumstances existing at the testator's death, take effect as an executory limitation. Thus, if there is a devise to A for life (or in tail) with remainder to the first son of B who shall attain 21, in fee, and A dies (without issue) in the lifetime of the testator, then, if at the testator's death B has no son who has attained 21, the devise to such person becomes executory (*Pay's Case* (1601) Cro. Eliz. 878; *Hopkins* v. *Hopkins* (1734) Ca. temp. Talbot, 44).]

Rule in Shelley's Case

1178. When a limitation of an estate of freehold [a] is followed, in the same conveyance, either mediately or immediately,[b] by a limitation of an estate [c] in the

same land to the heirs, or heirs of the body, of the person to whom the former freehold estate is limited, or, in a devise, by words signifying a similar intention,[d] the effect of the subsequent limitation will be, to enlarge the interest taken under the former limitation into an estate in fee simple or an estate tail respectively, and not to confer a separate estate upon such heirs.[e] For the purposes of this §, a testament and a codicil thereto,[f] and a settlement and an appointment under a power contained therein,[g] are regarded as parts of the same conveyance.

(a) Including analogous interests in copyhold tenure (*Creaton* v. *Creaton* (1856) 26 L. J. Ch. 266; *Baker* v. *Parson* (1872) 42 L. J. Ch. 228). A limitation of an existing term of years to A, with a gift over, whether by lease or assignment, vests the whole term in him; and so the rule has no application in such a case. And a bequest of a term of years to A, with a gift over in favour of his heirs, also gives A the whole term (*Kinch* v. *Ward* (1825) 2 Sim. & S. 409). But even a limitation of a new term of years with a subsequent limitation to the "heirs and assigns" of the lessee, does not cause the rule to operate (*Tapner* v. *Merlott* (1739) Willes, at p. 180).

(b) In theory, the first and second estates do not unite so long as there is an intervening estate; and, consequently, the latter, even though contingent, is not destroyed, but takes effect as though the rule had never operated (*Lewis Bowles' Case* (1615) 11 Rep. 79 b). It seems that if any intervening limitations are void for remoteness, the Rule in *Shelley's Case* will not prevent the subsequent limitations being bad (*Re Mortimer* [1905] 2 Ch. 502).

(c) The word "estate" is here used strictly. The rule will not operate to unite a legal estate and an equitable interest (*Baker* v. *Parson, ubi sup.*). But two equitable interests, of a freehold nature, will unite (*Richardson* v. *Harrison* (1885) 16 Q. B. D. 85).

(d) This is the most difficult point in the application of the rule. Apparently, in a deed, no word other than the word "heirs" will cause the rule to operate; since no other words were, at the common law, sufficient to limit an estate of inheritance. On the other hand, the word "heirs" in a deed will not necessarily bring in the rule; if it is clear that the settlor is using the word

merely to indicate specific persons (*Evans* v. *Evans* [1892] 2 Ch. 173). But, in a devise, owing to the greater laxity of interpretation, any expressions indicating an intention to limit an estate to the heirs of the first taker will be sufficient to bring in the rule (*Roddy* v. *Fitzgerald* (1857) 6 H. L. C. 823, approved in *Van Grutten* v. *Foxwell* [1897] A. C. 658); while, on the other hand, the use of the word "heir" (*Archer's Case* (1597) 1 Rep. 63 b; *Fuller* v. *Chamier* (1866) L. R. 2 Eq. 682) or even "heirs" (*Goodtitle* v. *Herring* (1801) 1 East, 264, recognized in *Jesson* v. *Wright* (1820) 2 Bligh, at p. 18) will not have that effect; if it is clear from the context that the testator intended by these expressions to indicate specific persons, and not successors in general.

(e) *Shelley's Case* (1579) 1 Rep. 219.
Perrin v. *Blake* (1769) 1 W. Bl. 672; (1772) 4 Burr. 2579.
(f) *Hayes* v. *Foorde* (1770) 2 W. Bl. 698.
(g) *Jesson* v. *Wright, ubi sup.*

[The mere fact that the settlor intends that the rule shall not operate, is immaterial (*Thong* v. *Bedford* (1815) 4 M. & S. 362; *Van Grutten* v. *Foxwell, ubi sup.*, at p. 684, *per* Lord Davey). But it is sometimes very difficult to distinguish between an intention that the rule shall not operate, which does not prevent the application of the rule, and an intention to indicate specific persons, which does. It has been held, in Ireland, that the rule applies to limitations of successive interests in an estate *pur autre vie* (*Macnamara* v. *Dillon* (1883) 11 Ir. R. (Ch.) 29).]

So-called "double possibilities"

1179. Where, in a conveyance *inter vivos*, there is a limitation of an estate to an unborn person for life, followed by a limitation in remainder of the same land to any issue of such person, the later limitation is void.[a] Where similar limitations occur in a devise, they will, if the second limitation is of an estate tail, have the effect of conferring on the first taker an estate tail of such a nature that it would, unless barred, be capable of descending to the persons

in whose favour the remainder is limited, and to them only (*cy-près*).[b]

(a) *Whitby* v. *Mitchell* (1890) 44 Ch. D. 85. (This decision shows (i) that limitations effected by way of use are subject to the rule, equally with common law remainders, (ii) that a settlement creating a special power of appointment and an appointment under it are, for the purposes of the rule, treated as parts of the same conveyance.)
Re Nash [1910] 1 Ch. 1. (This case decides that successive equitable limitations are also subject to the rule. Presumably, the rule would also apply if one limitation were legal, and the other equitable.)

(b) *Monypenny* v. *Dering* (1847) 16 M. & W. 418.
Parfitt v. *Hember* (1867) L. R. 4 Eq., at p. 446. (In this passage, Romilly, M. R., states the *cy-près* doctrine as if it were applicable where the void limitation is only for life. *Sed quære.*)
Re Rising [1904] 1 Ch. 533.
Re Mortimer [1905] 2 Ch. 502. (This case shows, that if no estate tail of recognized character would answer the description in the text, it is not possible to save the limitation by implying an estate tail of a novel character. Thus, a devise to the eldest (unborn) son of A, with remainder to his daughters *successively* in tail, would not confer upon A's son an estate in tail female; because such an estate does not descend to daughters successively.)

[This rule, sometimes called the "Rule Against Double Possibilities," which has recently been the subject of much discussion in the cases above quoted, was probably, in its origin, one of the many checks devised by the Courts to prevent the creation of an unbarrable estate tail. It is not applicable to limitations of chattels personal (*Re Bowles* [1902] 2 Ch. 650). Neither is it applicable to vested remainders; for no remainder limited to an unborn person can possibly be vested. It is probably applicable to executory limitations; but there seems to have been no case on the point. It is quite independent of the Rule against Perpetuities (*Re Nash*, *ubi sup.*, at p. 7, *per* Farwell, L. J.); and is said to be much older than that Rule. Care must be taken to distinguish it from the Rule in *Shelley's Case;* which has no application when the second limitation is to a specific person or persons. The Rule against Double Possibilities only applies where the first limitation is for life; because a first limitation in tail would enable the first taker to get rid of all remainders by barring the entail, while there can be no remainder on a fee simple. For the purposes of the rule, the first taker is not deemed to be 'unborn,' if he is *en ventre sa mère* when the settlement comes into operation (*Re Wilmer's Trusts* [1903] 2 Ch. 411).]

Future corporations and 'heirs' of unborn person

1180. No remainder can be limited to a corporation not in existence, or to the heirs of a person not born when the limitation was made.

Cholmley's Case (1597) 2 Rep., at 51 b.
Sutton's Hospital Case (1612) 10 Rep., at 26 b.

[There is not much authority on this point; but the *dicta* in the two authorities quoted are accepted as law. Obviously, there could be no limitation of a present interest or of a vested remainder in either case; but it is possible that an executory limitation having a similar object, if it was carefully kept within the Rule against Perpetuities, might be good, e. g. a devise to A in fee, but if B (a bachelor) should beget a son who should die in A's lifetime, then to the heir of that son.]

Rule against Perpetuities

1181. All future interests in land, whether created by way of remainder [a] or of executory limitation, are subject to the Rule against Perpetuities.[b]

(a) *Re Frost* (1889) 43 Ch. D. 246.
Re Ashford [1905] 1 Ch. 535.
Whiteby v. *Von Luedecke* [1906] 1 Ch. 783.
(b) *Cadell* v. *Palmer* (1833) 1 Cl. & F. 372.

[This is not the place in which to deal with the Rule against Perpetuities, which, as a restriction affecting limitations of all kinds of property, will be found fully stated in a later Section. It is enough here to say, that the Rule renders void any limitation which might permit a claim to property to arise after the expiry of lives in being at the date of the limitation and a further period of twenty-one years. If no life interests are involved, the limitation is restricted in operation to an absolute period of twenty-one years from its date. There is the usual allowance for gestation where gestation actually exists. The reason why the rule is alluded to at this stage is that, quite recently, and after somewhat acute controversy, it has been established, so far as Courts of First Instance can lay down a rule of law, that it applies to contingent remainders equally with executory interests, though, historically speaking, it was evolved in connection with the latter class of in-

terests. The cause of the extension of the Rule is probably to be found in the statutory changes made during the nineteenth century, by which the former liability of a contingent remainder to be defeated by the determination of the particular estate, has been largely diminished. Of course, no reversion or vested remainder can be void for perpetuity.]

Abeyance of seisin

1182. A contingent remainder, whether freehold or copyhold, is (subject to §§ 1180, 1181) capable of taking effect, notwithstanding the determination, by forfeiture, surrender, or merger, of any preceding estate, in the same manner, in all respects, as if such determination had not happened.[a] And a contingent remainder created after 2nd August, 1877, provided that it conforms to the rules affecting the limitation of executory interests, is capable of taking effect as if it had originally been created as an executory interest, notwithstanding the previous determination (by any means) of the particular estate.[b]

(a) Real Property Act, 1845, s. 8.
Pickersgill v. *Grey* (1861) 30 Beav. 352 (copyhold).

(b) Contingent Remainders Act, 1877. (The Act applies to hereditaments of any tenure; and, apparently, even copyholds were, prior to the Act, liable to destruction on the natural failure of the particular estate (*Habergham* v. *Vincent* (1793) 2 Ves. Jr., at p. 233, *per* Buller, J.).)

Executory interests

1183. An executory interest in land arises whenever, by a valid limitation, land is limited to or is vested

in one person to the use of another at some future date, certain or uncertain, in such a manner that a remainder is not created. In a deed, such limitation must be expressed to be made by way of use or equivalent words; in a devise, or in a disposition of copyholds, the limitation may be expressed directly in favour of the person taking the executory interest.

Hinde v. *Lyon* (1577) 3 Leon. 64 (said to be the earliest case in which the defeasance of a fee simple by an executory limitation was recognized).
Wellock v. *Hammond* (1590) Cro. Eliz. 204.
Pells v. *Brown* (1620) Cro. Jac. 590. (This case laid down the important rule, that an executory interest, except where it followed on an estate tail, could not be destroyed by a common recovery.)
Scatterwood v. *Edge* (1697) 1 Salk. 229. (This case is so badly reported, that it is difficult to be sure what was actually decided. But the remarks of the Court are valuable.)
Baker v. *White* (1875) L. R. 20 Eq., at p. 171.

[Executory interests arose out of the practice of the Court of Chancery, which, prior to the Statute of Uses, treated future dispositions of the profits of land, though not conforming to the rules affecting common law remainders, as binding in Equity on the conscience of the legal owner who had accepted his estate with knowledge of the dispositions, or was otherwise in conscience bound by them. On the passing of the Statute of Uses, such dispositions, where the necessary conditions were present, became binding also in law, i. e. independently of notice. Thus, for the first time, it became possible to limit future legal interests in land regardless of the technical rules of the common law on the subject of remainders. For instance, it became lawful (a) to limit future interests independently of a particular estate ("springing uses"), (b) to limit such interests in defeasance of preceding interests ("shifting uses"). In the former case, the seisin remained in the settlor or the trustees until the future use arose; in the latter it shifted away from the previous taker, in whom it had already been executed by the statute. The reason why the formality of expressing the use was dispensed with in executory devises was (probably) that, all devises of land before 1540 (Statute of Wills) being, apart from local custom, merely equitable in their effect, it was assumed, after devises became legal, that the

testator intended his limitations to be executed by the Statute of Uses (*Perry* v. *Phelips* (1790) 1 Ves. Jr., at p. 255, *per* Thurlow, C.). But the recognition of executory devises of estates for years, which, after some hesitation, was accorded before the end of the seventeenth century (*Eyres* v. *Faulkland* (1697) 1 Salk. 231), though convenient, was less logical; for the Statute of Uses can have no application to such dispositions, inasmuch as neither the testator nor his personal representatives or legatees can be "seised" of an estate for years. It seems, however, also to be well settled, that there can be an executory limitation *inter vivos* of copyholds of which the settlor is seised in fee or for life (*Boddington* v. *Abernethy* (1826) 5 B. & C. 776); though it may be that the lord cannot be compelled to accept a surrender by which future uses are left to be executed under a power of appointment (*Flack* v. *Downing College* (1853) 13 C. B. 945). As to the distinction between executory interests and remainders, see *ante*, § 1177. As above stated (§ 1181, n.), the Rule against Perpetuities applies to executory limitations (for which, indeed, it was specially introduced); and so also, probably, does the so-called Rule against Double Possibilities (§ 1179), though, on this point, no case can be found. Formerly, a theoretical difficulty arose in limiting an executory interest in defeasance of a fee simple (which, provided that the Rule against Perpetuities is observed, is a valid and, indeed, common limitation). It was argued, that the execution of the first limitation in fee simple exhausted the seisin of the trustee, and left no seisin out of which the subsequent use could be executed. To meet this difficulty, the fiction of a *scintilla juris* in the trustee was invented; but this fiction has been rendered unnecessary (if it ever was necessary) by the provisions of the Law of Property Amendment Act, 1860, s. 7.

Failure of issue

1184. Where, in a testament made or revived since 1837, there is an executory devise over on failure of the issue of any person (whether such person takes an interest in the land under the testament or not), such failure of issue is construed (subject to § 1185) to mean a failure of issue in the lifetime or at the death of such person, and not an

indefinite failure of issue; unless, by reason of such person having a prior estate tail in the land, or of a preceding gift being, without any implication arising from such words, a limitation of an estate tail to such person or issue, a contrary intention appears by the testament.[a] There is no such presumption in the case of an executory limitation by deed.[b]

(a) Wills Act, 1837, s. 29. (The wording of the Act is confined to "issue"; but there is a disposition to extend the rule to other expressions, e. g. "male issue" and "children." See *Re Edwards* [1894] 3 Ch. 644; *Re Booth* [1900] 1 Ch. 768.)

(b) *Fisher* v. *Wigg* (1700) 1 P. Wms., at p. 15, *per* Gould, J. *Bamfield* v. *Popham* (1702) *ibid.*, at p. 57, *per* Powell, J. *Morgan* v. *Morgan* (1870) L. R. 10 Eq. 99.

[Before the passing of the Wills Act, 1837, the rule was to treat such limitation as referring to an indefinite failure of issue, and, therefore, as creating an estate tail in the person the failure of whose issue was contemplated, unless such person's interest was greater than an estate tail (*Sonday's Case* (1611) 9 Rep. 127 b; *Fisher* v. *Wigg*, *ubi sup.*; *Bamfield* v. *Popham*, *ubi sup.*; *Idle* v. *Cook* (1705) 1 P. Wms. 70). Obviously, this construction was far from satisfactory to the executory devisees; inasmuch as the previous taker might bar the estate tail and destroy their chances. But it seems to be applied, even now, to limitations by deed (*Morgan* v. *Morgan*, *ubi sup.*, where, however, the estate already limited to the previous taker was, apparently, a fee simple).]

Issue attaining 21

1185. Where a person is entitled to land for an estate in fee, or for a term of years absolute or determinable on life, or for term of life, with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified

period or not, that executory limitation will be or become void and incapable of taking effect, if and as soon as there is living any issue who has attained the age of twenty-one years, of the class on default or failure whereof the limitation over was to take effect. This rule only applies when the limitation is contained in an instrument coming into operation after 31st December, 1882.

Conveyancing Act, 1882, s. 10.

[The section applies to equitable interests (*Re Shrubb* [1910] W. N. 143). *Quære:* can an executory limitation of the legal estate in copyholds be said to be contained in an "instrument"?]

1186. Generally speaking, in the absence of express provision, a person entitled to a remainder or an executory interest has no right to possession or profits of the land, or to exercise any control thereover. But:— *Rights of owner of future interest*

(i) the owner of a vested remainder of inheritance is entitled to bring an action or apply for an injunction in respect of actual or apprehended waste or trespass on the land by a tenant for life or years or a stranger;

Jefferson v. *Jefferson* (1682) Lev. 130.
Bedingfield v. *Onslow* (1685) *ibid.* 209.
Seagram v. *Knight* (1867) L. R. 2 Ch. App., at p. 632.

[It is necessary that the plaintiff's interest should have existed when the waste was caused or the trespass committed. It is said

(Co. Litt. 53 b) that a tenant in tail after possibility could not bring the old Action of Waste. But it is doubtful whether this disability prevents him bringing the modern Action of Case. For the various kinds of action open to the remainderman, see *ante*, § 1077 note.]

(ii) the owner of a vested remainder for life,[a] and the owner of a contingent remainder in fee,[b] though he cannot obtain damages for waste, may apply for and obtain an injunction to prevent the commission of unlawful waste, and an account of the profits received;

(a) *Dayrell* v. *Champness* (1700) 1 Eq. Ca. Ab. 400.
Mollineux v. *Powell* (1730) 1 P. Wms., at p. 268 (n).

[It seems doubtful whether a remainderman for life has a right to an account (*Pigot* v. *Bullock* (1792) 1 Ves. Jr. 479).]

(b) *Garth* v. *Cotton* (1750) 1 Ves. Sr. 545.
Williams v. *D. of Bolton* (1784) *ibid.*, *per* Lord King, C.

(iii) a person in whose favour a valid executory limitation in defeasance of a fee simple is limited may obtain an injunction to restrain the commission of equitable waste by the tenant in fee simple, and an account of the profits received.

Turner v. *Wright* (1860) 2 De G. F. & J. 234.
Blake v. *Peters* (1863) 1 De G. J. & S. 345.

[In two reported cases (*Aspinwall* v. *Leigh* (1690) 2 Vern. 217; *Claxton* v. *Claxton* (1690) *ibid.* 152) owners of future interests were allowed to enter upon the land and cut timber for their own benefit, against the will of the tenants for life in possession. But one of these decisions, at least, was given during a vacancy of the Great Seal; and neither is likely to be followed at the present day.]

INDEX TO BOOK III

Action
  right of owner of *interessi termini* to bring 612
  waste, for, who may bring 576
Admittance
  copyholds to, compelled by Mandamus 593
  limited owners, of 597
Adverse possession 553
Advowsons 553
After-acquired property
  covenant to settle, not extending to estate tail 570
Alienation
  condition in lease against 630, 631
  fee simple, of 558
  lessee for years, by 626, 627
  reversioner, by 651, 652
  tenant at will, by, effect of 647
Ameliorating waste
  non-liability of tenant for life for 577
Assignee
  leaseholds, of, liability of 632

Base fee
  doctrine of merger not applicable to 570
  enlargement of 569
  when tenant in tail obtains 504, 505

Cestui que vie
  presumption from absence of 582
  production of, power of the court as to 582, 583
Compensation
  improvements, for 624
Consent
  protector of settlement, of 568

Consideration
compulsory enfranchisement, for 600, 601
voluntary enfranchisement, for 599
Contingent remainder
creation of 653, 654
when capable of taking effect 663
Contract of sale
when fee simple must be conveyed 556, 557
Copyhold estate
action between lord and copyholder, when will lie 591
admittance, Mandamus to compel 593
" of limited owners 597
" to, on arbitrary fine 595
" " on reduced fine 595
alienation of 587, 589, 590
" by customary tenant for life 598
boundaries, duty of tenant as to 593
corporation as holder of 590
creation of 585
customary court, right to hold 588
definition of 584
devisability of 586, 587
enfranchisement of 589
extent of 585, 586
grant for lives, beneficial interest in 597
" of, how made 588
liability of tenant to action of contract 592
partition of 587
relief against forfeiture of 592, 593
right to fine where manor settled 596
tenant for life, right of, on paying fine 596
when consent necessary to grant of 587, 588
Corporation 556
gift to, in fee simple 556
Corporeal hereditament 547
nature of 547, 548
Covenants
"running with the land" 628, 629
Cross remainders
in tail 655, 656
life, for 656, 657

INDEX TO BOOK III

Customary freehold
    definition of 606, 607

Declaration of title
    right of owner of a fee simple reversion to 650, 651
Determinable life estate
    creation of 581
Distress
    as incident of reversion 550–552
    right of tenant at will to remedy of 645
"Double possibilities"
    Rule against, application of 660, 661

Easements 553
    equitable interests 553
Emblements
    alternative to claim of 624
    right of lessee for years to 623, 624
    " " tenant at will to 646
    " " " for life to 575
Enfranchisement of copyholds
    alternative of 601
    at common law 604, 605
    compulsory 600
    consideration for compulsory 600, 601
    " " voluntary 599
    effect of 603
    limited owner, to, effect of 605, 606
    rights not affected by 602
    suspension of 601, 602
    voluntary 598, 599
    when may be general 603, 604
Enlargement
    term of years of, into fee simple 638, 639
Estate at will
    definition of 640
    how created 640, 643
    how determined 644, 645
Estates
    at will 548, 550
    copyhold 548, 549

Estates — *continued*
customary freehold 548, 549
fee simple 548, 549, 554–560
for life 548, 572–583
for years 548, 550, 608–639
interests less than 553
pur autre vie 548, 572, 573
tail 548, 549, 561–571
Estate for life
corporations, as affecting 573
creation of 572, 573
definition of 572
forfeiture of 577
Estate for years
commencement of term in 614
contingent term in 615
creation of 608
form of lease 615, 616
liability of tenant for waste 625
limit of term in 615
option to determine 620
rent not necessary to creation of 620
Estate *pur autre vie*
corporation, right of, to hold 573
creation of 572
Estate tail 561
barring entail 563, 564
covenant to settle after-acquired property does not include 570
definition of 561
doctrine of merger not applicable to 570
general 561
in tail female 562
" " male 562
special 561, 562
rights of tenant 563
when tenant obtains base fee 564, 565
Estovers
right of lessee for years to 623
" " tenant for life to 574
Executory devise
failure of issue under, how construed 665, 666

INDEX TO BOOK III

Executory interest
rights of owner of 667, 668
when arising 663, 665
Executory limitation
effect of attainment of age on 666, 667

Failure of issue
executory devise over on, construction of 665, 666
Fee simple
alienation of 558, 559
attempted limitation over 559
creation of 554
determinable 559, 560
enlargement of base fee into 569
" " term of years into 638, 639
intermittent 560
no remainder after a 635
right of tenant in 557
words of limitation 555, 556
Fine
admittance on reduced 595
arbitrary, extent of 595
right of action of lord of a manor as to 591
" to, in settled manor 596
tenant for life, right of, on paying 596
Forfeiture
copyholder, when incurred by 589, 590
estate for life, of 577
relief against, of copyholds 592, 593
Franchises 553
Freehold estates
definition of 554
Future interest
rights of owner of 667, 668
species of 648, 649

Gift
corporation in fee simple, to 556

Improvements
compensation for 624, 625

INDEX TO BOOK III

Interesse termini
how converted into estate for years 610
liability of owner of, before entry 612, 613
nature of 610, 611
rights of owner of 611, 612

Land
interests in 547
" " less than estates 553, 554
Lease for years
alienation by, rights as to 626, 627
condition against alienation of 630, 631
covenant for renewal of 616, 617
form of 615
rights of lessee under 623, 624
warranty of fitness not implied in 636
Leaseholds
assignee of, liability of 632
Lessor
when liable for repairs 637
Limitation
double possibilities, effect of 660, 661
Limited owners
admittance of 597
right of, on payment of fines 597

Mandamus
admittance to copyholds compelled by 593
Manorial rights
extinguishment of 607
Merger
application of doctrine 552, 553
base fee not subject to 570
definition 552
estate tail not subject to 570

Perpetuities
Rule against 662, 663
Possession
presumption raised by 557
recovery by lessor on expiry of term 633, 634

INDEX TO BOOK III

Protector of settlement
consent of, when necessary 564, 565, 568
discretion of 567
joint, when arising 568
supplementary 566, 567
who cannot be 566
who is 565

Quasi entail
creation of 579, 580
how barred 580, 581
rights of tenant of 581
Quasi fee simple
alienation of 578, 579
creation of 578
Quiet enjoyment
implied warranty as to 635
liability of lessor for, extent of 634, 635
meaning of 635

Re-entry
right of lessor as to 632, 633
Remainder
construction of limitation as a 657, 658
creation of vested and contingent 653, 654
limitation of freehold otherwise than as a, 654
none after a fee simple 655
" to future corporation 662
" " heir of unborn person 662
rights of owner of 667, 668
Renewal of lease
covenant for 616, 617
Rent
as an incident to reversion 621, 622
payment of 622
tenant at will may distrain for 645
Repairs
when lessor liable for 637
Reversion
alienation by owner of 651, 652
creation of 649, 650
declaration of title to a fee simple 650, 651

Reversion — *continued*
incidents of 550, 552
rent as an incident to 621, 622
rights of owner of 650
Reversionary lease
rights of lessor under 613
Reverter
possibility of, when arising 652, 653
"Running with the land"
covenants said to be 628, 629

Satisfied term
nature of 637, 638
Shelley's Case
Rule in 658, 660
Surrender
term of years of, effect of 627, 628

Tenancy at sufferance 553
Tenancy at will
action for trespass and ejectment by tenant of 646
alienation by tenant, effect of 647
how created 640, 643
" determined 644, 645
liability of tenant for waste 647
notice not necessary to determine 645
recovery of rent under 645
right of tenant to emblements 646
" " " " profits 646
Tenant
liabilities of 549, 550
Tenant for life
alienation by 577, 578
liability for waste 575–577
right to emblements 575
" " estovers 574
title deeds, when deprived of 574
Tenant in tail
confirmation of voidable estate by 571
imperfect alienation by, effect of 570
Term of years
commencement of 614

Term of years — *continued*
creation of 608
enlargement into fee simple 638, 639
limit of 613
option to determine 620
surrender of, effect of 627, 628
Terms of years
classification of 608–610

Vested remainder
creation of 653, 654
Voidable estate
confirmation of, by tenant in tail 571
meaning of 571

Waste
action for, who may bring 576
copyholder, by 594
liability of lessee for years for 625
" " tenant at will for 647
" " " for life for 575–577

Yearly tenancy
creation of 617–619
determination of 619
Yearly tenant
when not liable for waste 626, 627

TEMPLI